

Residential Tenancies Tribunal

Application 2025-0151-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 12-March-2025.
2. The applicant, [REDACTED] represented by [REDACTED] and [REDACTED], hereinafter referred to as “the landlords”, attended the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not attend.
4. [REDACTED] and [REDACTED] were called into the hearing as witnesses.

Preliminary Matters

5. The tenant was not present or represented at the hearing and I was unable to reach them at the beginning of the hearing. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent’s absence so long as they have been properly served. The landlords submitted an affidavit with their application stating that they have served the tenant with the notice of the hearing via prepaid registered mail, tracking number [REDACTED] on 19-February-2025 (LL#1). In accordance with the *Residential Tenancies Act, 2018* this is good service. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.
6. There is a written fixed term rental agreement which commenced on 14-January-2024 till 31-January-2025 and then transferred into a month-to-month relationship. Rent is \$800.00 per month, due on the first of each month. A security deposit of \$600.00 was collected on 9-January-2024 and is in landlord’s possession.
7. The landlords amended their application to include hearing expenses of \$58.75.

Issues before the Tribunal

8. The landlord is seeking:
 - Validity of Termination Notice;
 - An Order for vacant possession of the rented premises;
 - Hearing expenses \$58.75.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
10. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy and Section 34: requirements for notices, and the following sections of the *Residential Tenancy Policy Manual*: Section 7-5: Interference with peaceful enjoyment and reasonable privacy and Section 12-1: Recovery of Costs.

Issue # 1: Vacant Possession of the Rented Premises Validity of termination Notice

Relevant Submissions

11. The landlords submitted a copy of a termination notice that was given on a *Landlord's Notice to Terminate Early – Cause form* (LL#2). The notice was issued to the tenant by putting it under the door and electronically via email on 3-February-2025, under Section 24: *Notice where tenant contravenes peaceful enjoyment and reasonable privacy*, to vacate on 10-February-2025.

Landlord's Position

12. The landlords stated that multiple complaints were received from other tenants in the multi-apartment building regarding the tenant in question. These complaints included allegations of insults, threats and the smell of smoke. The landlords stated that other tenants reported that the tenant exhibited aggressive behavior and, while servicing as superintendent, used this aggressions and threats again them.
13. The landlords are seeking an order of vacant possession.
14. The landlords requested to call two witnesses.

Witness one Statement

15. The witness stated that she has experienced threats from the tenant in question since September-2024, when he accused her of speaking to him using inappropriate language. The witness 1 stated that she observed the tenant displaying aggressive behavior toward other tenants and visitors, and to avoid confirmation, she attempted to distance herself from the tenant on multiple occasions.

On 4-November-2024 the witness reported receiving a text message from the tenant in which he threatened her with eviction. The tenant claimed he would use his position as superintendent to influence the landlords to evict her.

Additionally, the witness confronted the tenant about smoking in the building, as she, and her elderly mother and other tenants suffer from severe health issues. She stated that other tenants and the landlords had also asked him to stop smoking inside the unit, citing concerns about fire hazards, especially given that many elderly residents would struggle to evacuate in the event of a fire. She noted that each time the tenant reacted with anger. The witness further stated that the ongoing issue with the tenant has negatively impacted her health. Having lived as a tenant for seven years, she finds it increasingly difficult to feel safe in the premises. The witness stated that she relies on others to assist her in walking to the main entrance, as she fears further threats from the tenant.

The tenant provided a written statements to support her testimony (LL#3,4).

Witness two Statement

16. Witness stated that the tenant in question has been threatening her since they first met. She explained that while she lives downstairs – not directly beneath tenant's apartment – the corridor and stairwell are constantly filled with the smoke, as the tenant in question smokes in his unit. Witness stated that she repeatedly asked him to stop smoking inside the building, but he refused, and the issue has continued to the present day. She also stated that the smoke is particularly strong in her bedroom, making it difficult for her to sleep in her bed. As a result, she has resorted to sleeping on her couch and feels unable to fully enjoy her apartment due to ongoing smoke issue.

As the tenant is also a superintendent, the witness once asked him for his help fixing the door in dining room, however he entered her apartment without notice while she was not at home, although her parents were present. When he was unable to fix the issue at that time, he remarked that he could now enter her apartment through the window. The witness stated that this made her feel unsafe and threatened in her own home. The witness further stated that she has observed the tenant cursing at other tenants, and on one occasion he pushed her and called her names.

Additionally, the witness reported receiving threats from the tenant over the phone. She stated that once he sent her a text message at 2 a.m. stating that she was going to be evicted. The witness described the tenant as verbally abusive, and expressed fear that he might enter her apartment without permission. Due to these threats, she now asks her home care worker to check her mail for her, avoids using sidewalks, and is afraid to leave the apartment, as she feels terrified for her safety.

Analysis

17. Section 24 of the *Residential tenancies Act* states:

Notice where tenant contravenes peaceful enjoyment and reasonable privacy

24. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 7(a) set out in subsection 10(1), the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.

(2) In addition to the requirements under section 34, a notice under this section shall

- (a) be signed by the landlord;
- (b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and
- (c) be served in accordance with section 35.

18. Section 34 of the *Residential tenancies Act* states:

Requirements for notices

34. A notice under this Act shall

- (a) be in writing in the form prescribed by the minister;
- (b) contain the name and address of the recipient;
- (c) identify the residential premises for which the notice is given; and
- (d) state the section of this Act under which the notice is given.

19. I accept the landlords' testimonies, indicating that the tenant was properly served with a termination notice, as the tenant was not present or represented during the hearing to provide their own testimony. For those reasons I find that the termination notice given on 3-February-2025 under Section 24; *Notice where tenant contravenes peaceful enjoyment and reasonable privacy* to vacate on 10-February-2025, was served according to the Section 34 of the *Act* as stated above. The termination date was given not less than 5 days after the notice was served and meets the requirements of the *Act* as stated above. I find that the termination notice is a valid notice from a timeline perspective and technical requirements but must be further analyzed for validity (see below).

20. I accept that tenant's smoking inside the apartment was an ongoing issue. Based on the testimonies of the witnesses and landlords, after multiple warnings and requests to stop, the tenant continued to smoke inside the unit and the smell of smoke was pervasive throughout the corridors and stairwells, creating a significant and ongoing issue for other tenants, who were sharing living environment. While smoking in the apartment may constitute a breach of material term of the rental agreement, I find that the impact of this issue extends beyond that. As per witness 2 statement, she was unable to sleep in her bedroom due to the persistent smell of smoke and was forced to sleep on her couch in the living room area instead. Give the duration of complaints and the extent of the impact on other tenants, I accept that this issue directly affected the peaceful enjoyment of the premises by other tenants.

21. According to the Section 7-5 of the *Residential Tenancies Policy Manuel*, unreasonable disturbances interfering with peaceful enjoyment and reasonable privacy may include but is not limited to the following: excessive noise, aggressive or obnoxious behaviour, threats and harassment. I accept the testimonies of both witnesses that the tenant used abusive language and made threats, including threats of eviction while in a position of authority as superintendent. I find that this behavior disturbed the ability of other tenants to live peacefully and enjoy their privacy in their homes.

22. Given the nature and severity of these issues, and that the tenant's conduct significantly interfered with the rights of other tenants to peaceful enjoyment of the property, I find that the termination notice is valid, and the tenant should have vacated the unit on 10-February-2025.

Decision

21. The termination notice is a valid notice. The landlords' claim for an Order of vacant possession succeeds.

Issue # 2: Hearing expenses \$58.75.

Relevant Submission

22. The landlords paid \$20.00 for the application fee (LL#5), and \$18.75 for prepaid registered mail (LL#6), and \$20.00 for service of Commissioner for Oaths (LL#7) and are seeking reimbursement.

Analysis

23. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee and registered mail expenses and other cost incurred in the preparation for a hearing. I accept, that the landlords provided proofs of expenses, and for those reasons I find that they are entitled to reimbursement. As the landlords' claim has been successful, the tenant shall pay the hearing expenses.

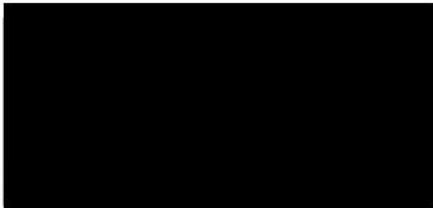
Decision

24. The landlords' claim for hearing expenses succeeds in the amount of \$58.75.

Summary of Decision

25. The landlords shall retain \$58.75 from the security deposit to cover *hearing expenses*.
26. The tenant shall vacate the premises immediately.
27. The tenant shall pay to the landlords any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.
28. The landlords will be awarded an Order of Possession.

March 13, 2025
Date



Oksana Tkachuk, Adjudicator
Residential Tenancies Office