

Residential Tenancies Tribunal

Application 2025-0182-NL & 2025-0198-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 26-March-2025 at 9:02 am.
2. The applicant, [REDACTED], hereinafter referred to as the tenant, attended via teleconference.
3. The respondent and counter-applicant, [REDACTED], hereinafter referred to as the landlord, also attended via teleconference.
4. [REDACTED] was called as a witness for the landlord via teleconference.

Preliminary Matters

5. Both parties indicated that they were prepared to proceed with the hearing and would prefer to do so, notwithstanding any deficiencies in notice.
6. The tenant applied to determine the validity of a termination notice, referring to the notice dated 11-February-2025. The landlord applied for an order of vacant possession based on the same termination notice. As a landlord cannot receive an order of vacant possession without establishing that they served a valid termination notice, these two claims turn on the same issue. They are therefore addressed together in Issue 5, below.

Issues before the Tribunal

7. Should the tenants' claim for a refund of rent succeed?
8. Should the tenant's claim for compensation for inconvenience succeed?
9. Should the tenant's claim for damages succeed?
10. Should the landlord's claim for an order of vacant possession succeed?

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
12. Also considered and referred to in this decision are sections 24 and 34 of the *Act*, reproduced here:

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.

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.

Issue 1: Refund of Rent

13. The tenant claims for a refund of rent in the amount of \$2000.00. He says that the landlord gave an improper notice of rent increase on 9-October-2023 (LL#1 page 25) for 1-April-2024 from \$1600/month to \$1800/month. The rental term runs from the 5th day of each month to the 4th day of the next. He therefore seeks the difference of \$200.00 for each month since the first increased payment. The landlord made submissions that notwithstanding any potential technical deficiencies, she did provide six months notice.
14. S. 16(3) and s. 16(4) read as follows:

Rental increase

16. (3) Where a landlord increases the amount of rent payable by a tenant, the increase shall be effective on the first day of a rental period, and the landlord shall give the tenant written notice of the increase

(a) not less than 8 weeks before the effective date of the increase where the residential premises is rented from week to week; and

(b) not less than 6 months before the effective date of the increase where the residential premises is rented from month to month or for a fixed term.

(4) In addition to the requirements under section 34, a notice under subsection (3) shall

(a) be signed by the landlord;

(b) state the effective date of the increase;

(c) state the amount of the increase;

(d) state the amount of rent payable when the increase becomes effective; and

(e) be served in accordance with section 35.

15. The notice does not contain the name of the recipient, contrary to s. 34(b) of the *Act*. It does not state the amount of the increase, contrary to s. 16(c) of the *Act*. As it was issued on 9-October-2023, four days after the start of the rental period, it provided less than six full months' notice, contrary to s. 16(3)(b) of the *Act*. The notice of rental increase is invalid.
16. As a tenant is entitled to six months notice, I award the tenant the difference of the rent for six months, totaling \$1200.00.
17. The tenant's claim for a refund of rent succeeds in the amount of \$1200.00.

Issue 2: Compensation for Inconvenience

18. The tenant claims for \$2700.00 in compensation for inconvenience, consisting of two separate items. The first is \$25.00 per month for 18 months for the loss of sleep, which he alleges is a result of the landlord's negligence in handling the witness his neighbour. The other item is \$2250.00 for lost rent from his sublessees, who he says left due to the neighbour's actions that the landlord failed to prevent or address.
19. The landlord says that she is the only landlord of the property and the tenant is not allowed to have subtenants. She did say she was aware he would have three roommates sharing expenses. She says she asked for the names and contact information of his subtenants and he refused.
20. In regard to the claim for loss of sleep, it must be noted that this tribunal is compensatory in nature. In other words, the purpose of the tribunal is to restore parties to where they would be had the other party not violated the act and/or the rental agreement. In lieu of this, this tribunal makes awards of compensation only in response to actual financial losses which are proven on a balance of probabilities. No actual financial loss was

demonstrated in relation to the loss of sleep, so this portion of the tenant's claim for compensation for inconvenience fails.

21. S.10(1) of the *Act* imposes a number of statutory conditions which apply to all residential premises tenancies in the province. Statutory condition 3 reads as follows:
 3. *Assigning or Subletting Residential Premises* - The tenant may assign or sublet the residential premises subject to the written consent of the landlord, and the landlord shall not arbitrarily or unreasonably withhold consent and shall not levy a charge in excess of expenses actually incurred by the landlord in relation to giving consent.
22. The landlord is incorrect insofar she takes the position that she can put a blanket ban on the tenant subleasing the premises. She cannot withhold consent arbitrarily or unreasonably. However, asking for the names and contact information of the subtenants is not arbitrary or unreasonable. It is a prudent precaution should contacting them directly be necessary; for instance, if there were an emergency involving the premises and the tenant was unavailable or indisposed. The tenant did not receive or seek the written consent of the landlord. His sublease was therefore contrary to the rental agreement and he cannot recover the lost rent, in accordance with the unclean hands doctrine.
23. The tenant's claim for compensation for inconvenience fails.

Issue 3: Damages

24. A previous hearing of this tribunal regarding the application 2024-0836-NL was held between the parties and resulted in a decision issued on 25-October-2024. The adjudicator determined that the landlord had failed to uphold her duty to maintain the premises in good condition in relation to the driveway. The landlord was ordered to repair the driveway accordingly, which she subsequently did. The tenant now claims \$620.45 in compensation for damages to his vehicle which he says was caused by the inadequate conditions of the driveway.
25. The previous decision already determined that the driveway was not in good condition and that this was the responsibility of the landlord. Those issues will not be re-considered here. The tenant's claim for damages therefore turns on whether he can provide sufficient evidence to prove his vehicle was damaged, that the damage was caused by the driveway, and the cost of repairs.
26. After reviewing the totality of the tenant's evidence, I am unable to conclude that the damage was caused by the driveway on a balance of probabilities. The only evidence provided was the evidence of the poor condition of the driveway. I appreciate that it is difficult to prove that the damage was caused, completely or partially, by a particular event or conditions. Nevertheless, it is the applicant's burden to provide sufficient evidence to establish the claim. Where they fail to meet this burden, their claim must fail.
27. The tenant's claim for damages fails.

Issue 4: Vacant Possession

Landlord's Position

28. The landlord takes the position that she served a valid termination notice, that the move out date on the notice has elapsed, and that she is therefore entitled to an order of vacant possession. She submits that the tenant unreasonably interfered with another tenant's right to peacefully enjoy the property, and she called that person to testify as a witness. The witness resides in a separate unit in the same building. He characterized the tenant as "the neighbour from hell." He testified that the tenant violated his privacy by recording him without his knowledge or permission, that the tenant interfered with his snow clearing and blocked in his vehicle, frequently called the police, made loud noises early in the morning to deliberately disturb him, interfered with the garbage disposal, and interfered with his guests. He says "I could be on the phone here with you for a week" listing incidents with the tenant.

Tenant's Position

29. The tenant acknowledged that the notice was properly served but submits that he never interfered unreasonably with anyone else's right to peaceful enjoyment. He vociferously denies the witness' allegations.

Analysis

30. In order to receive an order for vacant possession, a landlord must submit a valid termination notice. To be valid, a termination notice must comply with all relevant sections of the *Act*. The landlord provided a termination notice labelled LL#3.
31. LL#3 is a termination notice in writing in the form prescribed by the minister. It contains the name and address of the recipient. It identifies the premises for which it was given. It states that it was issued under s. 24 of the *Act*. It therefore complies with s. 34.
32. LL#3 was signed by the landlord. It states the date on which the tenant is to move out and the rental agreement is to terminate. It was served on the tenant electronically in accordance with s. 35(2)(f) of the *Act*, and the tenant acknowledged this. It therefore complies with s. 24(2).
33. LL#3 was issued on 11-February-2025 and the termination date listed is 18-February-2025, which is not less than five full days later. It therefore complies with the timeline requirements of s.24(1).
34. The only remaining issue to consider is whether or not the tenant contravened statutory 7(a) as listed in s. 10(1) of the *Act*. This provision reads as follows:

7. Peaceful Enjoyment and Reasonable Privacy

- (a) The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.
35. The witness is another tenant of the landlord in the property. The question, then, is did the tenant unreasonably interfere with the rights or reasonable privacy of the landlord or

the witness? It is alleged that he did so in several different ways. As the facts are in dispute, I will address this issue by dealing with each allegation separately before making a final determination as to whether the tenant interfered with these rights or privacy and whether any interference was unreasonable.

36. The first allegation is that the tenant interfered with the reasonable privacy of his neighbour, the witness, via recordings. The landlord testified that she saw recordings of the witness on Facebook. I was not provided any screenshots or other documentary evidence showing these recordings. The witness stated that he was uncomfortable being recorded and felt that his privacy was violated. He admitted he did not personally observe any of these recordings.
37. The tenant acknowledges making recordings but denied interfering with the witness' right to privacy. He testified that his recordings were all taken from inside his own home or around the exterior of the property. He indicated that he had felt frustrated when he had previous issues with the witness and complained to the landlord, who had asked for recordings or other forms of documentary evidence in support of his complaints. He says that these recordings were meant to address this issue, prepare for potential hearings before this tribunal, and also gave him a sense of safety. A large number of such recordings were provided by the tenant as part of his evidence (generally, see T#100-271, though not all of these involve the witness). He agreed that he technically posted the recordings to Facebook; however, he indicated that he did not make them viewable to the public or uninvolved persons. Rather, he says he created a private page only visible to him and the landlord which he used as a platform to upload the recordings and document the issues he observed so that he could ensure she was able to view them. He says he did this after other attempts to communicate issues with the landlord were unsuccessful. Some screenshots the tenant provided (T102 and T103 for example) seem to support this, as they are screenshots from Facebook showing posts marked with a lock icon indicating the number of people who can see it is restricted.
38. When determining whether a person's privacy has been interfered with, one must consider whether the person had a reasonable expectation of privacy. The tenant testified that most of the recordings were taken inside his own apartment. Such recordings only record the witness or his guests insofar as they can be overheard due to their volume. There is no question that, in general, a person is legally entitled to record the inside of their own residence. A person who is communicating loudly enough to be overheard by their neighbour cannot have a reasonable expectation of privacy, because a reasonable person would expect to be overheard. Other recordings are taken of the front exterior of the premises from the steps just outside the tenant's door. Here, too, there is no reasonable expectation of privacy. The remaining recordings are all from security cameras positioned on the outside of the premises. One of these cameras was positioned towards the garage and the other was positioned towards the driveway. Again, I see no reasonable expectation of privacy in these areas.
39. The witness alleged that the tenant would frequently call the police over little with the intent to harass him. The tenant testified that he called the police only when he genuinely felt it was warranted. This testimony was supported by recordings he provided which include more than once instance where noise from the witness' apartment went

beyond the merely annoying and could reasonably cause concern for a person's safety. One exhibit (T#100) includes an intelligible threat of self-harm.

40. The witness alleged that the tenant interfered with his snow clearing. He testified that when he had shovelled out his parking space, he had inadvertently allowed some of the cleared snow to fall into the tenant's parking area. He testified that this led to the tenant deliberately blocking him in with snow and, later, using his vehicle to block the lane until the witness cleared the parking space for the tenant. The tenant denies this. He says that he, in fact, was away at the time and his car was parked at his workplace while he worked salting roads and/or parking lots. He testified that he may have moved some of the snow the witness added to his parking spot back into the witness' area, but no more. The tenant provided a video (T#138) from one of his security cameras which shows him using his snowblower on 10-February-2025. He submits the video as evidence that he did not, deliberately or otherwise, use the snowblower to block anyone in. I agree that it appears to show him blowing the snow deliberately out of the way.
41. The witness testified that the tenant would jump, stomp, and yell obscenities early in the morning with the purpose of disturbing him. He said this happened three mornings in a row during the first week of February. He also said that the tenant used a loud horn, like an air raid siren. The tenant denies all of this.
42. The witness testified that he had constructed a small platform for the garbage containers and the tenant destroyed this. The tenant denies this but confirms that subsequent to being granted a peace bond against the witness he moved the platform around the corner so that the witness would not have to use the tenant's walkway to access it.
43. The witness testified that the tenant and/or his sublessees were spinning their car wheels on the driveway and deliberately churning up dirt and rocks. The tenant points out that in a previous hearing (2024-0836-NL), it was held that the landlord failed their obligation to keep the property in good condition regarding the driveway. He testified that his car lost traction on the driveway while it was in poor repair. He testified that he would lose traction in the driveway. Videos were provided in support of this (T#175, 177, 183).
44. While there are many allegations that the tenant interfered with the rights of the witness, in all cases it is either a pure "he said, she said" situation where I must weigh one party's word against the others, or the documentary evidence available supports the tenant's account. The landlord's testimony did not support a finding that the tenant violated the statutory condition. Her knowledge was mostly second-hand and demonstrated that she considered the matter a private dispute between the tenants. She stated that she "stopped listening" to the tenant's complaints and made remarks to the effect that she believed the two tenants simply could not live together peacefully and one of them had to go. Whether or not this is true, it does nothing to support an inference that the tenant was acting in violation of the Act or the rental agreement.
45. Considering the totality of the evidence, I find that the landlord has failed to establish on a balance of probabilities that the tenant unreasonably interfered with the rights of another tenant.

46. LL#3, the notice dated 11-February-2025, is invalid. The landlord's claim for an order of vacant possession fails.

Decision

47. The tenant's claim for a refund of rent succeeds in the amount of \$1200.00.

48. The tenant's claim for compensation for inconvenience fails.

49. The tenant's claim for compensation for damages fails.

50. The termination notice dated 11-February-2025 is invalid. The landlord's claim for an order of vacant possession fails.

51. The tenant was partially successful in their application and may therefore seek to be reimbursed for his reasonable hearing expenses. He seeks only the \$20.00 application fee, which I award.

Summary of Decision

52. The termination notice dated 11-February-2025 is invalid.

53. The landlord shall pay to the tenant \$1220.00 as follows:

Refund of Rent.....\$1200.00

Hearing Expenses.....\$20.00

Total.....\$1220.00

25-April-2025

Date

Seren Cahill
Residential Tenancies Office