

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0420-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:34 a.m. on September 8, 2021.
2. The applicants, [REDACTED], hereinafter referred to as "tenant1, tenant2 and tenant3" attended by teleconference.
3. The respondents and counter applicants, [REDACTED] hereinafter referred to as "landlord1 and landlord2," attended by teleconference.
4. The landlords submitted sworn testimony from the former roommate, [REDACTED] and the downstairs tenants, [REDACTED], hereinafter referred to as "witness1, witness2 and witness3."

Preliminary Matters

5. The landlords submitted an affidavit of service (LL#01) stating that landlord1 served each of the tenants with notification of the hearing by email on 15-October-2021. The tenants verified service of documents. The tenants did not submit an affidavit, landlord1 waves his right to service.
6. The tenants entered into a rental agreement (TT#08) with the landlords, one of the tenants has since moved out. The agreement is written for a term of April 01, 2021 – March 31, 2022. Rent is \$1,800.00 and month with a security deposit of \$900.00 paid on March 30, 2021. When the fourth tenant moved, his share of the security deposit: \$225.00, was reimbursed, leaving a total of \$675.00 security deposit in the landlord's possession. Landlord1 said he usually receives the full amount of rent from tenant1.

Issues before the Tribunal

7. The tenants are questioning the validity of the termination notices and the landlords are seeking vacant possession. There are three termination notices in question.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. Also relevant and considered in this case are the following sections of the *Residential Tenancies Act, 2018*: Section 24; Notice where tenant contravenes peaceful enjoyment and reasonable privacy, Section 18: Notice of Termination of a Rental Agreement and Section 34; Requirements for Notices.

Issue 1: Validity of termination notice:

Termination Notice 1

Tenants' Position

10. Tenant1 said that the termination notice 1 was sent to the tenants as a text message; tenant1's text message was placed into evidence (TT#01). The text is a conversation between landlord1 and tenant1 where he informs the tenants that, due to complaints and ongoing issues, he is giving them 5 weeks' notice and they are to be out of the apartment by 30-September-2021.
11. Tenant2 said that they were never given any warnings.
12. Tenant1 said that they should have been given 3 months' notice; not 4 weeks. She said that they weren't given a reason and therefore are entitled to 3 months' notice.

Landlords' Position

13. Landlord1 said that there were multiple reasons for the eviction: i.e. dog poop in the yard, ongoing issues with noise, garbage issues, dogs barking, neighbors complaining and trouble amongst the roommates.

Analysis

14. The *Act*, Section 34 says that to serve notice:

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.

15. This termination notice does not contain the name and address of the tenants, it doesn't identify the residential premises for which it is given and it doesn't indicate the section of the *Act* identifying the authority under which the notice is issued.
16. This termination notice doesn't meet the requirements of the *Act* and is not valid.

Decision

17. The termination notice sent by text dated with a termination date of 30-September-2021, is not a valid notice.

Termination Notice 2

Tenants' Position

18. The second termination notice (TT#02) is a Landlord's Notice to Terminate – Standard; under Section 18 of the *Residential Tenancies Act, 2018*. The notice is signed for 01-October-2021 and dated with a termination date of 31-December-2021.
19. Tenant1 said that landlord1 both personally delivered and subsequently texted the notice to all the tenants.

Landlords' Position

20. Landlord1 said that he served the Landlord's Notice to Terminate – Standard it by delivering it personally to the tenants first and then he followed up by sending it by text on 01-October-2021 at 4:51 p.m.

Analysis

21. Both the parties agree to the service of this document.

22. According to the *Act* Section 35

Service of documents

35. (2) A notice or other document under this Act other than an application under section 42 shall be served by a landlord on a tenant by

.....

(f) sending it electronically where

a. (i) it is provided in the same or substantially the same form as the written notice or document,

(ii) the tenant has provided an electronic address for receipt of documents, and

(iii) it is sent to that electronic address; or

.....

(6) For the purpose of this section, where a notice or document is sent electronically, it shall be considered to have been served on the day it is sent, if the document is sent by 4 p.m., or the next day that is not a Saturday or holiday, if the document is sent after 4 p.m.

23. The service of this document electronically on 01-October-2021 at 4:51 p.m., which is a Friday, would mean it wasn't served until Monday 04-October-2021. This would have resulted in the termination notice being invalid. The testimony that landlord1 delivered this notice in person however, before sending it electronically, means that the document was served within the timelines and therefore is a valid notice.

Decision

24. The termination notice sent on 01-October-2021 with a termination date of 31-December-2021 is a valid notice.

Termination Notice 3

Tenants' Position

25. The third notice is a Landlord's Notice to Terminate Early – Cause (TT#03) for interference with peaceful enjoyment under Section 24 of the *Residential Tenancies Act, 2018*. The form is signed on 05-October-2021 and dated with a termination date of 12-October-2021. Tenant1 said that this was sent to them electronically by email.

26. Tenant1 said that they didn't know that the landlords had an issue with them, until they were given notice and they thought they had a good relationship with landlord1.

27. Tenant1 said that they could hear noise from the other apartment as well, but never complained because they accepted that you would hear the other apartment.

28. Tenant1 introduced a video (TT#04) into evidence whereby you can hear faint music and there appears to be daylight coming in from a window. In the second video submitted, (TT#05) someone is taping an argument where you can hear a woman speaking loudly to someone else. Tenant1 said this was recorded at 9:00 a.m. on a Friday morning. In the third video submitted (TT#06) there is loud music that can be very clearly heard in the upstairs apartment. The woman in the video says to a young girl, I don't know how you'll be able to sleep when you go to bed. Tenant1 said before she started taping she could hear the downstairs tenants talking about the upstairs tenants loudly over the loud music and that this went on until 12:00 a.m. In the final video (TT#07) raised voices can be heard; but it is difficult to decipher what is being said.

29. Tenant1 said that they can hear arguing multiple times a week and that she believes that the couple are yelling at their son.

30. Tenant1 said that the police have only been at their apartment upstairs once and that was to take her statement about something that has nothing to do with the apartment.

31. Tenant1 said that there was a complaint about rotten squid in the garbage container and they would have dealt with the squid situation, but she and tenant3 were out of town and didn't have time to get this done before the landlord dealt with it. She said that tenant2 was the only person home and she doesn't have a car, so she couldn't get rid of the squid. She said tenant2 helped clean this up with landlord1.

Landlords' Position

32. The landlord confirmed that he sent this termination notice electronically to the tenants' emails, on 06-October-2021.
33. Landlord1 said that he started receiving complaints from the downstairs tenants the first week that the upstairs tenants moved in. He said that the downstairs tenants have lived in their apartment for a number of years: witness2 for 4 years and witness3 for 10+ years.
34. Landlord1 said that the downstairs tenants have complained of loud noise, music, dogs barking incessantly, garbage left around the property and their fear it will attract rats, dog poop in the backyard making it unsuitable for use. Tenant3 uses the shed in the backyard for a side job doing woodworking, he can no longer use the area due to the mess of dog poop in the yard.
35. In addition to the complaints from the downstairs tenants landlord1 said, he has had complaints from the neighbors. On one day in particular on 26-August-2021, he had multiple complaints of a very strong odor. He said that the odor was so strong that the neighbors couldn't go into their yards. He contacted the tenants about the odor and subsequently he had to return home from the cabin, to remove rotten squid from the garbage container and then clean the container. He confirmed that the smell was noticeable from a distance.
36. The landlords had witnesses provide statements about their experiences. Witness1 is a former roommate and he said in his sworn statement (LL#04) that he requested to move early and be released from his lease. He said that the apartment was very unsanitary and that food and garbage would be left out to rot. He said that the smell was so bad it would emanate throughout the house and into the downstairs apartment.
37. Landlord1 and witness3 both were concerned about the impact of rotting food and garbage as the house is close to a local mall and there is a concern of attracting rats.
38. Witness2 and witness3 are a couple with a small child, in their statements (LL#05 & LL#06), both sworn statements speak to the noise, garbage around the deck, the dog poop in the yard, which they no longer use, music and noise until 2:00 am on many nights and they have concerns about not being able to sleep, fighting in the basement, police attending the apartment and that there seems to be more people staying there than what is on the lease.
39. Witness3's sworn statement said both he and their young son are unable to sleep. He also said he doesn't want to move, that this has been his residence for a long time and that they and their child has friends in the area.
40. Landlord1 stated and witness 3 declared in his sworn statement, that they have approached the tenants and that things will clear up for a couple of days and then revert back to the same issues. Landlord2 said that they have sent numerous text messages to the tenants to deal with the ongoing issues.

41. Landlord1 also submitted video evidence (LL#05) provided by the downstairs tenants, where you can hear the dogs barking; it appears to be a nighttime video.
42. Landlord2 said that she believes that the evidence provided by the upstairs tenants of video of noise or arguing (TT#01, TT#02, TT#03 and TT#04) was taken in retaliation. Landlord2 said that it is normal to have music or arguments and that just because this happens, doesn't mean that those tenants are doing this all the time. Landlord1 said he has never had a complaint about the downstairs tenants and doesn't think this is relevant information, landlord1 and lanlord2 are not interested in evicting the downstairs tenants.

Analysis

43. It is difficult to decipher who is interfering with who in this situation. I have considered that tenant1 said that in the video (TT#03) the tenants from downstairs were talking loudly over the loud music about the upstairs tenants.
44. I also took into account that they also provided a video where someone is down in the laundry room (TT#02) overhearing an argument, that is happening in the adjacent room.
45. Landlord2 pointed out for my consideration that people arguing or having the music up on the weekend is normal behavior, she said that just because they can sometimes hear the noise doesn't mean anything because noise will sometimes happen when there are different people living in the same house. Landlord1 said they haven't had any complaints of noise in the years that the downstairs tenants have lived there.
46. I accept the evidence that the tenants provided that they are hearing noise from the other apartment, however the evidence and testimony also says, that the argument was at 9:00 am on a Friday morning(TT#02), and the loud music was happening before a young child's bedtime (TT#03), as indicated in paragraph 28.
47. I also accept the testimony that prior to the loud music playing in video (TT#03) that the downstairs tenants were speaking above the loud music saying things about the upstairs tenants; it is probable that the situation in the house has created an adversarial atmosphere.
48. According to Residential Tenancies Policy 7-05 Peaceful Enjoyment, interference of peaceful enjoyment is defined as: "an ongoing disturbance or activity, outside of normal everyday living, cause by the landlord or the tenant". Peaceful enjoyment may include, but is not limited to the following: (i) excessive noise; (ii) aggressive or obnoxious behaviour; or (iii) threats and harassment.
49. I accept that the noise coming from the upstairs apartment has been interfering with the downstairs tenants' ability to sleep and carry out their normal activities. Beyond the noise there is the issue of garbage, the smell of rotting food, and the dog poop in the yard that has made it unpleasant for the downstairs tenants to use that common area. Landlord1 and witness3 have attempted to correct these issues but both state that the situation reverts back within a few days.

50. I acknowledge that the upstairs tenants have proven that they also hear noise from the downstairs tenants, however this issue is not in question, as the landlords have clearly said that they have no interest in pursuing this matter, they believe that this was only raised by the upstairs tenants in defense of their own behavior.
51. In consideration of Section 24, see below, the notice dated with a termination date of 12-October-2021 meets the requirements of the Act and is a valid notice. .

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.

Decision

52. The termination notice (TT#03) signed on 06-October-2021, delivered on 07-October-2021 with a termination date of 12-October-2021 is a valid termination notice.

Issue 2: Vacant Possession of the rental premises

Landlord's Position

53. The landlords are seeking an order for vacant possession of the property

Analysis

54. It has been determined in paragraph 24 that the second termination notice dated 31-December 2021 is valid. It has also been determined in paragraph 52 that the third termination notice dated 12-October-2021 is valid. This earlier termination date is an enforceable day of termination. The tenants should have moved on or before the 12-October-2021.

Decision

55. The landlords' claim for an order for vacant possession of the rented premises succeeds.
56. The tenants shall vacate the property immediately.

57. The tenants shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

Issue 2: Hearing Expenses

58. The landlords incurred the cost of \$20.00 to file this application and provided the receipt for same (LL#07). The tenants also incurred this cost to file the application (TT#09).

59. As the landlords' claim is successful the tenants shall pay the \$20.00 for this expense from the damage deposit.

Summary of Decision

60. The landlords are entitled to the following:

- An order for vacant possession of the rented premises,
- The tenants shall vacate the premises immediately,
- The tenants shall pay to the landlord 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.
- The landlords are authorized to retain \$20.00 of the security deposit.

November 17, 2021

Date