

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0433-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:39 a.m. on 16-November- 2021.
2. The applicant, [REDACTED] hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.
4. The landlord submitted a witness information form (LL#06) naming [REDACTED] and [REDACTED] as her witnesses, they both attended the teleconference and will hereinafter be referred to as “witness1 and witness2.”
5. The tenant submitted an Authorized Representative form (TT#01) requesting [REDACTED] [REDACTED] attend on her behalf. She also submitted an email (TT#09) explaining that Bahareh will only be attending as a support, [REDACTED] did attend at the end of the hearing and will hereinafter be referred to as “witness3.”

Preliminary Matters

6. Neither the tenant nor the landlord provided an affidavit to this board. The tenant testified that she served the landlord with notification of the hearing on 13-October-2021; the landlord confirmed that she was given notice at that time. The tenant waived her right to notice, to expedite the process and have the matter heard as scheduled. As both parties were present and ready to proceed, I proceeded with the hearing.
7. The landlord testified that she entered into a rental agreement with the tenant that was signed on 05-May-2021. The tenant started moving in her belongings the end of May and officially took occupancy on 01-June-2021. They had a written agreement (TT#02) for a six month term from 01-June-2021 – 30-November-2021. \$500.00 rent was due on the 1st of each month. The tenant paid a damage deposit of \$350.00 on 05-May-2021 that the landlord still has in her possession.

Issues before the Tribunal

8. The tenant is questioning the validity of the termination notice. The landlord is seeking vacant possession of the rental premises. There have been four termination notices served on the tenant.

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 case are the following sections of the *Residential Tenancies Act, 2018*: Section 18: Notice of termination of rental agreement, and Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy, Section 20: Notice where material term of agreement contravened, as well as, Section 34: Requirements for notices.

Issue 1: Validity of termination notice

Termination notice 1

Tenant's Position

11. The tenant said she received the first termination notice as an email (TT#03). The email was dated for 02-September-2021. The email is from the landlord, stating that they would not be renewing her lease that was dated to expire on 30-November-2021.
12. The tenant submitted an email thread (TT#03) between herself and the landlord in which she raised the issue that a new tenant was moved in and would be sharing the bathroom with herself and another tenant. She had questioned in the email if rent would be changed to reflect this accommodation.
13. The tenant said she didn't know why she was being evicted and questioned why this was happening.

Landlord's Position

14. The landlord said she was new to being a landlord and trying to do things correctly. She said that typically the room with the new tenant was held for guests or emergencies. Normally this room would not be used for a tenant.
15. The landlord said witness2 had made her aware that witness1 was needing help and she offered to let witness1 stay in that room and help her find another place to stay.
16. The landlord said that she attempted to contact the tenant to let her know about witness1 moving in, but was unable to reach her. She clarified by saying she didn't have to do this, this was her decision, she only reached out to the tenant to try to keep everyone in the house informed.

17. The renting of this room created issues with the tenant.
18. The landlord said that the tenant wanted a reason why she was ending her agreement so she told her of two outstanding issues: damage to the basement ceiling and a refrigerator in her room that she was told to remove. The landlord said that this text was meant to be a standard 3 month notice.

Analysis

19. For a standard 3 month notice, Section 18.(2) of the *Residential Tenancies Act, 2018* states:

Notice of termination of rental agreement

18. (2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises

- (a) not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;
- (b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and
- (c) not less than 3 months before the end of the term where the residential premises is rented for a fixed term.

20. A notice must also include:

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.

21. A notice given under Section 18, does not require a reason or explanation for the notice. It does however, require that a full 3 months are given, this means that the notice has to be served on or before the first day of a rental period. This notice was served on 02-September-2021 which is the second day of the rental period. Therefore, this notice becomes effective for 01-October-2021. The three month period would then end on 31-December-2021.

22. In addition to the time frame, notice must name the section of the *Act*, under which the notice is given, the email sent to the tenant (TT#03) only states that the notice is given in accordance with the *Act*, but does not give the section, which would indicate the reason why a notice is given.
23. For both of these reasons, the termination notice dated 02-September-2021, with a termination date of 30-November-2021, is not a valid notice.

Decision

24. The termination notice dated 02-September-2021, with a termination date of 30-November-2021, is not a valid notice.

Termination notice 2

Tenant's Position

25. The tenant received an email on 05-October-2021 at 12:08 pm (TT#08) with a Notice to Terminate Standard (TT#07) under the authority of section 18. The notice is signed by the landlord with a termination date of 31-January-2022.
26. The tenant provided this information for evidence and confirmed service.

Landlord's Position

27. The landlord confirms that she sent this notice to an email address provided to her by the tenant and that they used this email for communication

Analysis

28. As shown in paragraphs 19 and 20, this notice meets all the requirements of the *Act* and is a valid notice.

Decision

29. The standard termination notice, emailed to the tenant on 05-October-2021, signed on that day with a termination of 31-January-2022, is a valid notice.

Termination Notice 3

Tenant's Position

30. The tenant provided a copy of the third termination notice (TT#05) which was sent by email (TT#06). The notice is sent by email on 06-October-2021, the attached Notice to terminate early – cause is due to interference with peaceful enjoyment and reasonable privacy Section 24 of the *Residential Tenancies Act, 2018*. The notice is signed for 06-October-2021 with a termination date of 11-October-2021.
31. The tenant disagrees with statements made by the landlord and her witnesses that she has violated this Section of the *Act*.
32. The tenant does question the landlord's decision to allow witness1 to move into the guest room. It was her understanding that she would only be sharing a bathroom with one other person on that floor. She provided an email thread (TT#03) from when witness1 first moved in, in this thread she is questioning the landlord if there will be a change in the rent due, created by the inconvenience of another tenant on her floor. This thread resulted in her first termination notice.
33. She questions why there is an issue with her questioning witness2, on the night that witness1 moved in. Witness2 is a person she has lived with, so she asked her instead of addressing witness1, about witness1 moving in. She wonders why it is an issue that she spoke to the person she knows.
34. The tenant disputes that she flooded the downstairs, as she has no water source in her room.
35. She questions why it is an issue that she has a mini fridge in her room, but states that she has it unplugged because she was told she couldn't have it.
36. She disputes that teaching classes from her room, as part of her educational requirements, is setting up a business. She teaches these classes on Monday and Friday mornings, there are no students entering the home for classes, they are attending online. She also said that since the pandemic, many people have been allowed to work from home. Witness3 confirms that this is a common occurrence with many graduate students in the same position. The tenant provided documentation (TT#11) indicating what her duties are for her assistantship.
37. The tenant also provided documentation showing that she has been unwell (TT#12) and she said that she would like to be left alone to focus on her education and her health.

Landlord's Position

38. The landlord and her witnesses have a number of issues with the tenant.

39. In paragraphs 14, 15 & 16 the landlord testified that she did contact the tenant to inform her that she was allowing witness1 to move into the smaller room on her floor, she did not reach her prior to witness1 moving in. She explained that this was only done out of consideration and the decision to rent is entirely hers. She had been told by witness2 that witness1 was in a difficult situation with her housing, and she decided that she was going to help witness1 out. She contacted witness1, picked her up from her previous rental and moved her in. She promised witness1 that she would help her find new housing. Both witness1 and witness2 confirmed this.
40. Witness1 said that the first night she moved in, the tenant came out of her room and asked witness2, was witness1 moving in? Then the tenant went into her room and started yelling that she would not be paying for witness1's rent and utilities. The tenant was very upset. Witness1 found this situation frightening, she was going through a tough time herself and was upset by the situation. Witness1 also questioned why the tenant would not speak to her about her moving in, but rather, spoke directly to witness2.
41. The landlord said she was horrified by the behavior of the tenant and thought that they should all do what was necessary to help each other out.
42. The landlord was also concerned that the tenant had washed her hair in her room this past summer, and subsequently caused a leak in the room below. The tenant doesn't have a water source in her room and is next to the washroom, however the landlord said the tenant told her she washed her hair in her room and thought she had cleaned up all the water. The landlord had repairs done and decided that she would recoup the cost from the tenant's damage deposit after she moved. Witness2 confirms that when a group of people went out to dinner, after this occurrence, with both the landlord and the tenant, they were laughing and joking about the tenant washing her hair in her room and causing the leak, the tenant at that time was saying that she had done this.
43. The landlord reported that she had noticed that the tenant's window was open this past summer and a storm was on the way. She contacted the tenant by text and told her she was going to enter her room to close the window. She said that the tenant then told her, at that time, that she has a mini-fridge in her room. The tenant provided the text thread (TT#10). The landlord told her at that time that she is to get rid of the fridge. The landlord took a picture of the fridge (LL#07) in August and again in October (LL#08) to show that the fridge was still fully stocked and in use, even though she has told the tenant that she is to get rid of the fridge.
44. The landlord also said that the tenant is in violation of her rental agreement (LL#01) which states in Part Eleven: Use of the Premises

"The tenant agrees to use the residential premises for residential purposes only and will not carry on, or permit to be carried on, in the residential premises, any trade or business without the written consent of the landlord."

The landlord reports that the tenant is operating a business out of her house, she is teaching classes for the university which is paid employment and she has not asked permission. The landlord states that she is married to a dean at the university and she knows that students are provided a space to do this work.

45. Witness2 said that the tenant has told them to be quiet and turned down the TV when she is teaching. Witness2 and witness1 both said that the tenant has made it clear in tenant meetings that she doesn't want to live in a dirty home and that she expects them to keep the place clean, pick up their belongings, wash the dishes before going out, etc. Witness2 said that the tenant had spoken to her about keeping the shared bathroom clean and that now witness2 is the only one who cleans it. Witness1 said that the tenant is not approachable. Witness1 reported that they came home to find another roommate's shirt in the garbage and that they suspect that the tenant had thrown it out.
46. The landlord said that she has had a number of issues since the tenant moved in with the plumbing, locks on the shed, etc.; she cannot tie these issues directly to the tenant. It is the landlord's belief that the tenant has outgrown this type of living arrangement and she would be better off living on her own.
47. The landlord confirms that the third termination notice was sent to the same email address provided by the tenant.

Analysis

48. Pursuant to Policy 7-05 Peaceful Enjoyment, interference of peaceful enjoyment is defined as:
"an ongoing disturbance or activity, outside of normal everyday living, caused by the landlord or the tenant". The policy further identified that peaceful enjoyment may include, but is not limited to the following:
 - (i) excessive noise;
 - (ii) aggressive or obnoxious behaviour; and
 - (iii) threats and harassment.
49. Section 24 of the Residential Tenancies Act, 2018 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.

50. The issues described by the landlord, witness1 and witness2, in no way describe a situation of interference of peaceful enjoyment. The issue of them not enjoying living with this tenant, or taking fault with the way the tenant interacts with them, could not reasonably be described as outside of everyday activity, her behavior doesn't fall under the terms "excessive, aggressive, obnoxious, or threatening."
51. If the landlord takes issue with the tenant teaching classes in her room, or damaging her property, she has the option to pursue an eviction under Section 20: Notice where a material term of agreement contravened. The eviction notice would have to indicate this section, as well as, meet the burden of proof. Considering the landlord is renting to young women who are attending school, there should be an assumption that during a pandemic or at any time, students could attend classes online, this activity would look very similar to a student teaching an online class. Teaching an online class would not be fundamentally the same, as a student operating a business, where customers would be attending the rental unit. Further, when renting to multiple individuals, if there is damage or issues happening in the home, there would need to be reasonable proof that said damage or issues are tied to one individual; suspicion because that tenant is not seen to be agreeable would not be adequate proof.
52. Finally, a termination notice under Section 24 requires that the landlord provide 5 clear days' notice. The notice period can't include the day it is served or the termination date. This notice does not provide for the 5 clear days and therefore is not a valid termination notice.

Decision

53. The termination notice dated for 06-October- 2021 with a termination date of 11-October-2021, is not a valid notice.

Termination Notice 4

54. Termination notice 4 (LL#03) was also sent by email (LL#02) and provided into evidence by the landlord. It is dated for 07-October-2021 with a termination date for 13-October-2021. This notice was emailed on 08-October-2021.

Tenant's position

55. The tenant confirms she received this notice as stated.

Landlord's position

56. The landlord confirms that this notice was served to the tenant as shown in the email provided into evidence (LL#02).

Analysis

57. The termination notice dated for 07-October-2021 with a termination date of 13-October-2021, was sent and considered served by email on 08-October-2021 as indicated by the email submitted by the landlord (LL#02).
58. As stated in paragraph 52: a termination notice under Section 24 requires that the landlord provide 5 clear days' notice. The notice period can't include the day it is served or the termination date. The notice begins when the document is served, not when the document is signed. This notice was given on 08-October-2021 at 1:28 pm. This notice does not provide for the 5 clear days and therefore is not a valid termination notice.

Decision

59. The termination notice dated for 07-October-2021 with a termination date of 13-October-2021, was not served until 08-October-2021 and therefore is not a valid termination notice.

Issue 2: Vacant Possession of property

60. Termination notices 1, 3 and 4 are not valid.
61. Termination notice 2, as shown in paragraph 29, "The Standard termination notice, emailed to the tenant on 05-October-2021, signed on that day with a termination of 31-January-2022, is a valid notice.
62. The tenant is required to move by the termination date of 31-January-2022. Should the tenant not move on that date, the landlord can apply for an order based on this decision after 31-January-2022.

Hearing Expenses

63. Both the landlord and the tenant submitted for hearing expenses, as there is no award, both applicants will be responsible for their own filing fee.

Summary of Decision

64. Termination notice 2, as shown in paragraph 29, "The Standard termination notice, emailed to the tenant on 05-October-2021, signed on that day with a termination of 31-January-2022, is a valid notice.
65. The tenant is required to move by the termination date of 31-January-2022. Should the tenant not move on that date, the landlord can apply for an order based on this decision after 31-January-2022.

66. The following termination notices are not valid:

- The email notifying the tenant that her lease would not be renewed dated for 02-September-2021 with a termination date of 30-November-2021
- The notice to terminate early for cause dated 06-October-2021 with a termination date of 11-October-2021
- The notice to terminate early for cause dated 07-October-2021 with a termination date of 13-October-2021.

November 25, 2021

Date

