

Residential Tenancies Tribunal

Application 2022-No.126-NL

Decision 22-0126-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:11 a.m. on 20-April-2022
2. The applicant, [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant" attended by teleconference.

Preliminary Matters

4. The landlord submitted an affidavit stating that she served the tenant notice of the hearing electronically on 05-April-2022 to the email provided to the landlord on the rental agreement. The landlord included the rental agreement to show that the email address is the same. She also said that she sent it by text to the phone number provided on the rental agreement. The tenant said that he has changed his email address and that the phone number belongs to his brother; his brother's phone was stolen. The tenant said he did not receive adequate notice. The tenant also said he did not inform the landlord of any of these changes. The tenant said he doesn't know who his landlord is, he thought his landlord was [REDACTED]. The landlord said that [REDACTED] is her step father who had managed the property for her, she is the owner of the property.
5. I accept that the landlord did serve the tenant to the contact information that he provided to her. The tenant was present at the hearing and I determined that the hearing would proceed as a postponement would unfairly disadvantage the landlord.

Issues before the Tribunal

6. The landlord is seeking:
 - Vacant possession of the rental premises.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. 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.

Issue 1: Vacant Possession of the Rental Premises

Landlord's Position

9. The landlord said that they have a written rental agreement for a monthly term. She said the tenant pays \$700.00 per month; the rental period is for the 1st day of the month to the last and rent is due in full on the first day of each month. She said that the tenant moved in on 19-February-2019 and he paid a security deposit of \$350.00 on 22-January-2019, she is still in possession of the deposit.
10. The landlord submitted a termination notice (LL#03), the notice is on a “landlord’s notice to terminate early – cause” form for interference with peaceful enjoyment and reasonable privacy. The notice is dated and signed for 11-February-2022 with a termination date of 20-February-2022. The landlord acknowledges that the notice has the address listed as number 5, while the apartment is actually number 5A. Apartment #5 is the address of the upstairs tenants. She said that she and her husband drove to the tenant’s apartment on 11-February-2022, her husband went to the tenant’s door and he wasn’t home, she watched her husband post the notice on the tenant’s door.
11. The landlord said that the tenant lives in the downstairs apartment and that the tenant’s in the upstairs apartment have made complaints to her regarding the behavior of the tenant. She has provided their text messages to her requesting something be done about the behavior of the tenant.
12. In text one (LL#04) the upstairs tenant texts the landlord to say that the tenant is making derogatory comments and telling them to watch their windows because of what he has planned for them. Text two (LL#05) the upstairs tenant is saying that they had Rogers Cable come in and that the technician went on the roof to determine the issue and he reported that the downstairs tenant has a large satellite wired in to their internet. Text three (LL#06) the upstairs tenant is saying that the tenant has the music so loud she could be in a club downtown, she said that two other times that week the music was going until 1:30 am and 2:30 am. She is saying that the landlord needs to fix this issue, that they are unable to sleep and it is the landlord’s responsibility to do something about this. And in the last message (LL#07) the upstairs tenant says that there has been 3 years of the issues with the downstairs tenant and that things either stop or they are moving.
13. The landlord said that this can’t continue and she doesn’t want to lose the upstairs tenants.

Tenant's Position

14. The tenant disputes the terms of the rental agreement he said that he had a yearly agreement from 01-February-2019 – 31-January-2020; they never signed another agreement and are now in a monthly agreement. He also said he paid a \$400.00 security deposit.
15. The tenant said his brother is on the lease, however, he doesn't live there. He does stay with him on occasion when he is in town. The tenant said his brother hasn't been at the apartment for at least 5 months.
16. The tenant agrees that he found the paper on his door and that he still has the termination notice.
17. The tenant said that he doesn't live at the apartment anymore, he just keeps his stuff there. He only goes there now to pick up clothes.
18. The tenant believes the issue is the people living upstairs and not him. He said he is looking for a new place to live.
19. The tenant said there have been issues and fighting ever since he moved in.

Analysis

20. According to Section 24 of the *Residential Tenancies Act, 2018*,

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.**

21. I accept the landlord's testimony and submitted evidence that the tenant is interfering with the peaceful enjoyment of the upstairs tenants. The tenant himself confirms that there have been ongoing issues for years. However, according to Section 34, of the *Residential Tenancies Act, 2018*:

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.

22. The address listed on the termination notice (LL#03) doesn't contain the apartment letter. The address is for #5 instead of #5A. As identified in paragraph 10 apartment #5 refers to the address of the upstairs tenants. The omission of the letter A invalidates the notice because the address for #5 is the upstairs tenants' apartment and not the apartment of the tenant that the termination notice is intended for. I therefore do not find in favor of the landlord.

Decision

23. The landlord's claim for vacant possession fails.

Summary of Decision

24. The notice served to the tenant by the landlord with a termination date of 20-February-2022 is not a valid notice.

April 26, 2022

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office