

Residential Tenancies Tribunal

Application 2022-No.134-NL

Decision 22-0134-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:33 a.m. on 11-May-2022.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1 and landlord2" attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1 and tenant2" attended by teleconference

Preliminary Matters

4. The landlords submitted two affidavits (LL#01 & LL#02) stating that they served both tenants via email of notification of today's hearing on 28-April-2022. Tenant1 confirmed this service.
5. The application was amended to remove security deposit applied. This matter has already been decided in a previous order (22-0024-00).

Issues before the Tribunal

6. The landlord is seeking:
 - Validity of termination notice
 - Rent paid \$900.00
 - Late fees \$5.00
 - Utilities paid \$224.27
 - Hearing expenses reimbursed \$20.00

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 15: Fee for failure to pay rent, and Section 23: Notice where landlord contravenes peaceful enjoyment and reasonable privacy, as well as Residential Tenancies Policy Section 03: Entry of Premises and Policy 07: Termination Notices.

Issue 1: Vacant Possession of the Rental Premises

Landlords' Position

9. Landlord1 said that the tenants took possession of the rental premises on 04-May-2021 and that they moved out on 31-December-2021. The landlords provided a written copy of the rental agreement (LL#03). Landlord1 said that the tenants have a monthly agreement from the 1st day of each month to the last. She said that they pay \$900.00 rent a month, that doesn't include utilities, and it is due in full, on the 1st day of each month. Landlord1 said that the tenants did pay a security deposit of \$600.00, however it has been awarded to the tenants in a previous order (22-0024-00).
10. Landlord1 said they are questioning the validity of the termination notice provided to them by the tenants. Landlord1 said that they had served the tenants a termination notice on a text message (LL#06) the message was sent on 01-December-2021 and said that it was a standard 3 month notice under Section 18 of the *Residential Tenancies Act, 2018*. In the text landlord1 tells the tenants that they have accepted an offer on the house. After this the tenants serve the landlords with a termination notice.
11. Landlord1 said that the text thread containing the Section 18 termination notice continues (LL#06) where the landlords are asked by the tenants, if they find a place sooner, do they require notice. The tenants are wondering if they find something for 01-January or 01-February do they have to give notice or can they move. Landlord1 said in the text (LL#06) and testimony that they would be required to give 1 months' notice in accordance with the *Act* unless they were moving 28-February-2022 when the Section 18 notice is dated for termination.
12. Landlord1 said after some discussion the tenants served the landlords with a "Tenant's Notice to Terminate Early – Cause" form on 20-December-2021 with a termination date of 31-December-2021, the notice is for interference with peaceful enjoyment and reasonable privacy. This is also included in the text thread (LL#06). Landlord1 said that she told her that this was not a reasonable cause and that they required a month's notice in accordance with the *Act*.
13. Landlord1 said that when they advertised the house for rent, they informed the tenants that the house was for sale and provided the Facebook thread (LL#04). She asked them at the time if they were interested, because they would have to move if the house sold. She said that the tenants were made aware it was listed and they were aware that the house would be viewed by potential buyers.
14. Landlord1 said that when they did the condition report (LL#03) it was noted that the landlords would be replacing the siding and the front door with a window. She said that the tenants were told that these repairs would take place when they first agreed to rent.

15. Landlord1 acknowledges that initially when the tenants moved in, when the realtor was showing the house, they would ask the tenants to leave for a half hour. She said that when the tenants pointed out that under the *Residential Tenancies Act, 2018*, that they did not have to leave, then they didn't ask them to leave during viewings.
16. Landlord1 said that the realtor contacted her and requested that they take the house off the market because of conflict with tenant2. They did withdraw the listing the end of May 2021 and put it back on the market in September 2021.
17. Landlord1 said that they tried to sell the house themselves during the summer months but didn't have a lot of interest, she said that there were not a lot of viewings at that time.
18. Landlord1 said that they did come by and do repairs, a lot of work was done outside and the outside work should not have interfered with the tenants. She said that after they replaced the siding, they did not burn the old siding, but they did burn the cardboard boxes that the siding came in.
19. Landlord1 said that she believes that when the tenants received their notice, that they wanted to leave right away and that they didn't want to give a full month's notice so they gave this notice. She said that they don't agree that they interfered with the tenant's peaceful enjoyment. She said that nothing had changed during the time that the tenants had served them a notice to interfere with their peaceful enjoyment, the only change that occurred was that the landlords had given the tenants notice and she suspects that they didn't want to give a full months' notice so they chose to find a way to do a shorter notice period.

Tenants' Position

20. Tenant1 said that the landlords notified them that the house was going to be inspected on 20-December-2021 and then the date changed to the 21-December-2021. She said that at that time they had had enough. She said that the house was for sale and the landlords were not respecting the 24 hours' notice. She said it was Christmas and that the pandemic was ongoing and that they had a small baby.
21. Tenant2 said that they took possession of the house on 04-May-2021 and was informed that the realtor was coming on 05-May-2021 to show the house and they were asked to leave for the viewing and for the door to be unlocked. She said this then happened again on 07-May-2021.
22. Tenant1 said that this happened every couple of weeks. Tenant2 said that in September they realized that they didn't have to leave while the realtor was there. They told the landlord this at that time; this conversation is reflected in the landlords' evidence (LL#06). The tenant also told the landlords, at that time, that they were entitled to 24 hours' notice in writing.
23. Tenant1 was pregnant at the time that they moved in, she had the baby in September. Tenant2 said that they had asked for two weeks when the baby was born for there to be no viewings but they still received requests from the landlords to show the house. They

didn't want to leave the house for viewings and chose to stay once they realized that they didn't have to go.

24. Tenant1 disputes that tenant2 was rude to the realtor and she said that they had even encouraged people to buy the house.
25. Tenant1 said that the landlords had replaced the siding and then burned the old siding in the yard of the rental. After they started the fire they contacted them to come home and close the windows. She said that the smell was in the house for days. Tenant2 said that the landlords would just show up to do repairs.
26. Tenant1 said that there were people viewing the house in December and the pandemic was a concern at that time. She said it was happening quite frequently. The landlords' evidence of the conversations at that time (LL#06) show that there were messages showing 24 hour notice for viewings on 02-Nov-2021, 09-Nov-21, 29-Nov-21, 26-Dec-21 (for 1:00, 1:30 & 4:30), 28-Dec-21 that didn't adhere to the 4 hours' notice required and the time was changed to accommodate this and one for 30-Dec-21. In addition there were two times booked for 20-Dec-21 and 21-Dec-21 for the home inspection.
27. Tenant1 said no one wants to be packing up during their baby's first Christmas, but by the time the home inspection was booked and changed they had enough and decided to give notice.

Analysis

28. Section 23 of the Residential Tenancies Act, 2018, states:

Notice where landlord contravenes peaceful enjoyment and reasonable privacy

23. (1) Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes statutory condition 7(b) set out in subsection 10(1), the tenant may give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises on a specified date not less than 5 days, but not more than 14 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 tenant;*
 - (b) *state the date on which the rental agreement terminates and the tenant intends to vacate the residential premises; and*
 - (c) *be served in accordance with section 35.*
29. In paragraph 12 landlord1 said the tenants served them with a "Tenant's Notice to Terminate Early – Cause" form on 20-December-2021 with a termination date of 31-December-2021. A picture of the termination notice was sent electronically to the landlords on 20-December-2021. The specified date of 31-December-2021 does fall between the 5 and 14 days as required. The notice does follow the guidelines of the Act. The question at hand is, did the landlords contravene the peaceful enjoyment and reasonable privacy of the tenants?

30. 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.

The landlords have not been accused of excessive noise, being aggressive or threatening. The key phrase in the description is "not limited to." Residential Tenancies Policy 3-002 covers notice to enter and states:

The purpose of this policy is to set reasonable guidelines for landlords (or their listing agent) to enter rental units for the purpose of inspecting premises, carrying out work on the premises, showing rental units for sale or showing the unit to prospective tenants. These guidelines help to protect both the tenant's right to privacy in their home and the landlord's right to use standard practices to inspect, show, and sell rental property.

31. The policy then goes on to say:

Notice Requirements (Section 34)

The notice to enter the residential premises **must be in writing** and **must identify the names of the tenants and the address of the rental unit**. The notice must also **identify the section of the Residential Tenancies Act** (Section 10.(1) 5) under which this notice is given.

In the notice to the tenant, the landlord must **identify the date of entry** and **identify a reasonable time of day for the entry**. The landlord must also **identify the reason(s) why entering the premises is necessary**.

If the landlord does not meet the responsibility to provide proper notice and sufficient reasons to justify entering the premises, the tenant has a right to terminate the tenancy for interference with peaceful enjoyment and reasonable privacy.

32. The landlords did give the tenants notice by text, however, they did not comply with the requirements of the *Act*, they did not provide the notice in writing, they did not identify the tenants by name, or give the address of the rental unit, they also did not identify the section of the *Act* under which the notice is given. As the notice wasn't proper the tenants do have the right to terminate their tenancy for interference with peaceful enjoyment and reasonable privacy.

33. This termination notice meets the requirements of the *Act* and is a valid notice.

Decision

34. The termination notice dated for 31-December-2021 is valid.

Issue 2: Rent paid \$900.00

Issue 3: Late fees \$5.00

Issue 4 Utilities paid \$900.00

Landlords' Position

35. The landlords submitted a rent ledger (LL#11) and billing from NL Power (LL#13). The time period covered by the outstanding amounts is for the month of January 2022.

Tenants' Position

36. The tenant's do not agree they are responsible for these bills.

Analysis

37. As the termination notice served by the tenants on the landlords is valid (paragraph 34) and they moved out 31-December-2021 (paragraph 9), the landlords' claim fails.

Decision

38. The landlords claim for rent, late fees and utilities fails.

Issue 5: Hearing expenses reimbursed \$20.00

39. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#14) and pursuant to policy 12.01, is not entitled to reimbursement of that cost from the tenant, as their claim was not successful.

Summary of Decision

40. The termination notice served to the landlords by the tenants, with a 31-December-2021 termination date, is valid.

May 12, 2022

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office