

Residential Tenancies Tribunal

Application 2022-No.157-NL

Decision 22-0157-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:02 a.m. on 15-March-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.
4. The landlord submitted a witness affidavit (LL#03) for the upstairs tenant [REDACTED]. She will hereinafter be referred to as the “upstairs tenant.”

Preliminary Matters

5. The landlord submitted and affidavit (LL#01) stating that he served the tenant in person on 28-February-2022; the tenant confirmed service.

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 the tenant moved into the apartment 01-August-2019 and he signed a year lease until 31-July-2020. They have not signed another lease and are now in a monthly agreement. The tenant pays \$650 a month; utilities are not included. The tenant paid a security deposit of \$487.50, before moving in and the landlord is still in possession of the deposit.
10. The landlord said that he served the tenant with a termination notice (LL#02), which is on a "landlord's notice to terminate early – cause" form for interference with peaceful enjoyment and reasonable privacy. The landlord dated and signed the form on 17-February-2022 with a termination date of 25-February-2022. The landlord said he served the tenant on the 17-February-2022.
11. The landlord did not have the tenant's address included on the termination notice (LL#02); the landlord confirmed that the termination notice is for the address listed on the application.
12. The landlord said that the tenant has been living in the apartment for a number of years, and until recently there have been no issues with the tenant, with the exception of him smoking in the apartment. The landlord has spoken with the tenant a number of times about not smoking, the tenant seems to have good intentions and agrees not to smoke in the apartment, but eventually goes back to smoking.
13. The landlord said that the upstairs tenants have an allergy to smoke and that the no smoking rule isn't negotiable.
14. The landlord submitted a witness affidavit (LL#03) from the upstairs tenant. She states that there are issues with the tenant smoking. She goes on to say that the tenant and his girlfriend on the 1st and 15th have parties that go around the clock for days on end.
15. The upstairs tenant said, in her statement, that there is screaming and fighting in the apartment and that the behavior of the tenant and his girlfriend is impacting their enjoyment of their home. She said that she had family over Christmas and a fight broke out downstairs. Her family left because of the fight and refuse to come back to her home because they think it is unsafe.
16. The upstairs tenant said she had her sister and her nephew over on another occasion and they had to leave because of the smoke/weed coming through the vents.
17. The landlord said that the house has a hot air furnace and the air gets circulated throughout the house.
18. The upstairs tenant also said her adult daughter was over one night and she called them to come home. Her daughter and her dog were locked in the bedroom with all the house doors locked due to the fighting downstairs.

19. The upstairs tenant has called the police because of the disturbance and the downstairs tenant's girlfriend has been aggressive with both her and her husband.
20. The upstairs tenant said that they have come home to find people passed out in their driveway.
21. The landlord said that he has spoken to the tenant about these issues and that the tenant has good intentions but his behavior stays the same.

Tenant's Position

22. The tenant agrees to the terms of his rental agreement as stated by the landlord.
23. The tenant confirmed that he received his termination notice from the landlord as stated in paragraph 10.
24. The tenant understands that he shouldn't be smoking and does try to smoke outside.
25. The tenant said that he is not a party animal as described by the upstairs tenant. He said he and his girlfriend were together for about 9 months and they have been split up for about 3 weeks.
26. He also said that a lot of the issues are created because his ex-girlfriend has bi-polar disorder and that she can be loud and erratic.
27. He said prior to Covid, if they were going to have a few drinks they would have gone to a club, but they have been drinking at home because everything is closed. He said he is not a drug user and that the upstairs tenant may have misunderstood things that were being said downstairs to indicate drug use.
28. The tenant said that he didn't realize that these issues were such a big deal until he got the termination notice.

Analysis

29. I accept the testimony of the landlord and witness statement of the upstairs tenant, to indicate that there is disruption in the house cause by the tenant and his girlfriend, this disruption is interfering with the peaceful enjoyment of the upstairs tenants.
30. The notice served to the tenant must meet the requirements in section 34, which states:

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.

31. As indicated in paragraph 11 the notice served on the tenant did not include the address and therefore doesn't meet the requirements in Section 34. As the notice doesn't meet the requirements, it is not a valid notice.

Decision

32. The landlord's claim for vacant possession fails; as the notice is not a valid notice.

Issue 2: Hearing expenses reimbursed \$20.00


33. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#04); the landlord's claim was not successful and pursuant to policy 12.01, he is not entitled to reimbursement of that cost from the tenant.

Summary of Decision

34. The termination notice, with a termination date of 25-February-2022, is not a valid notice.

March 18, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office