

Residential Tenancies Tribunal

Applications: 2022 No. 0227 NL

Decision 22-0227-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:19 AM on 9 May 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as the "landlord", participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "tenant1", did not participate in the hearing.
4. The respondent, [REDACTED], hereinafter referred to as "tenant2", did not participate in the hearing.
5. Two affidavits of service was provided by the landlord confirming that each tenant (L#1) was served of the claim against them.
6. The details of the claim were presented as fixed term tenancy of 12 months (December 2021- November 2022) with a written lease (L#2). The two tenants moved in early on 26 November 2021 and are currently residing in the rental premises.
7. In a proceeding under the *Residential Tenancies Act*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. The standard of proof, in these proceedings, is referred to as the balance of probabilities which means the applicants must establish that their account of events is more likely than not to have happened.

Issues before the Tribunal

8. The landlord is seeking vacant possession of the rental premises.

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 is sections 10 and 24 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

11. The tenants were not present or represented at the hearing. I was able to connect briefly with tenant2 by phone but the phone disconnected. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
12. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as he has been properly served.
13. As the tenant was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

14. The tenants reside in the basement apartment of a two story bungalow owned by the landlord and located at [REDACTED]. Monthly rent is set at \$750.00 and it is paid directly to the landlord from Income Support. A security deposit of \$450.00 was collected prior to the start of the rental agreement.
15. The landlord brought my attention to the "no smoking" clause of his written rental agreement which states: *Smoking (of any substance) is prohibited inside the premises and within 3 meters of the entrance or any open window. Any cigarette butts on the ground must be cleaned-up daily.*
16. When asked if he conducts formal move in or move out inspections, the landlord referred to the submitted copy of the **Move In/Move Out Form** (L#3) that he completed with the tenants prior to their taking occupancy of the rental unit.

17. The landlord testified that previous tenants of the rental unit would smoke outside and strongly denied that either unit in the rental premises previously smelled of smoke. As per this **Move In/Move Out** form mentioned above, the landlord highlighted how there was “fresh paint throughout” the unit and stated that he had renovated the bathroom in the basement unit.
18. The landlord issued a Termination notice (L#4) to the tenants under Section 24 of the *Act* for interference with peaceful enjoyment and reasonable privacy. The notice was signed by the landlord on 19 February 2022 with an effective move out date of 28 February 2022. This notice was provided to the tenants electronically.
19. When asked to explain the reason for issuing a Termination Notice under section 24, the landlord stated that his upstairs tenant at the rental premises asked him to visit her unit in January 2022 to observe first hand her concerns with the smoke coming from the basement unit (occupied by tenant1 and tenant2) of the rental premises. As a result of this visit, the landlord provided the tenant in the upstairs unit with a high quality air purifier in an attempt to mitigate the amount of smoke from the basement unit that was evident throughout.
20. The upstairs tenant, [REDACTED], was called as a witness to provide sworn testimony regarding the impact of tenant1 and tenant2 on her right to peaceful enjoyment of her rental unit. She testified that she has lived in the unit for over 10 years and that this is the first time she has had issue with the basement tenants.
21. The witness testified to how she has been impacted by strong smoke (marijuana, cigarette, and “crack”) since shortly after tenant1 and tenant 2 moved into the basement rental unit. She spoke of how she is fortunate to have a heat pump because she has done her best to block all vents, pipes and other gaps coming from the basement with towels and blankets. She testified that the smoke is especially strong in the bathroom and in her living room because she believes that is where her tenants smoke most commonly within the unit below her.
22. When asked by the landlord to explain the impact that the high end air purifier has had for her quality of life in the rental unit, the witness stated that she has noticed some difference but that she is unable to run it 24/7 because of its impact on her light bill. The witness spoke to the Air Quality Index (AQI) readings she gets from purifier and testified that they are regularly at unhealthy levels (e.g., greater than 100-149 ug/m³ for sensitive populations and greater than 151-200 for general population).
23. I gave leave for the landlord to submit photographic evidence of such readings after the hearing. Five such examples were provided (L#7) with two reading as unhealthy for sensitive populations (such as those with asthma) and three readings as unhealthy for the general population.

24. The witness testified that tenant1 and tenant2 make noise (fighting etc) all night long and then complain to the witness when she does things like “enter her apartment during the day” while they are sleeping.
25. The witness testified that she no longer has any quality of life in her rental unit. She stated that she has asthma and that she is happiest when she is away from her rental unit because then she can at least breathe. The witness became emotional during her testimony and spoke of how she had to received IV sedation instead of general anesthesia during a recent surgical procedure because her breathing was so compromised.
26. The witness stated that she is unable to move out of the unit because her asthma is so flared up from smoke of tenant1 and tenant2 that she has no physical stamina. She also stated that she is on long term disability and cannot afford to live elsewhere. The witness spoke further of how the anesthesiologist from her recent surgical procedure had also recommended that she move from her current rental unit.
27. When asked if tenant1 and tenant2 are still residing at the rental premises, the landlord testified that, as of yesterday they were still residing at the rental premises.

Analysis

28. 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.

29. Statutory Condition 7 of subsection 10(1) of the *Residential Tenancies Act, 2018* states:

7. Peaceful Enjoyment and Reasonable Privacy -

(a) The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.

30. According to landlord's records, on 19 February 2022, the day the termination notice was issued, the continued smoke from tenant1 and tenant1, continued to significantly impact the quality of life of the upstairs tenant, a woman with asthma.
31. The upstairs tenant testified how her quality of life has significantly declined since tenant1 and tenant2 began living basement unit of the rental premises. She testified extensively to the impact of the smoke from the basement on her personal health and also testified to how she can no longer sleep due to the constant nighttime noise from tenant1 and tenant2.
32. Together this evidence has established without a doubt, that tenant1 and tenant2 have contravened the right of the upstairs tenant to peaceful enjoyment and reasonable privacy in her rental unit.
33. In sum, as the abovementioned termination notice meets all the requirements set out in this section of the *Act*, and as it was properly served, it is a valid notice

Decision

34. The landlords' claim for an order for vacant possession of the rented premises succeeds.
35. The tenants shall pay to the landlord 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

36. The landlord claimed \$20.00 for the expense of applying for the hearing (L#8).
37. As his claim has been successful, the tenants shall pay this hearing expense.

Summary of Decision

38. The landlord is entitled to the following:

- An order for vacant possession of the rented premises,
- The tenants shall pay to the landlord any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

9 May 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal