

Residential Tenancies Tribunal

Application 2022-No.258-NL

Decision 22-0258-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:20 a.m. on 05-May-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach him by telephone at the start of the hearing. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. 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. The landlord submitted an affidavit (LL#01) with his application stating that he had served the tenant with notice of the hearing, personally by placing it in the tenant’s hand on 11-April-2022. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.

Issues before the Tribunal

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

Legislation and Policy

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

7. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 18: Notice of termination of rental agreement and Section 19: Notice where tenant contravenes peaceful enjoyment and reasonable privacy.

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

8. The landlord submitted the written rental agreement (LL#02) he has with the tenant. The tenant moved in just before 01-August-2021. The rental agreement begins on 01-August-2021. The tenant pays \$700.00 a month and this includes his utilities. The rental period is from the first day of the month to the last and rent is due on the 1st. The tenant paid a security deposit of \$350.00 before moving into the property; the landlord is still in possession of the deposit.
9. The landlord said that he and his family live upstairs and downstairs there are two apartments one with this tenant and another with a different tenant.
10. The landlord submitted two separate termination notices that he has served to the tenant. The first notice he served is a Section 18 notice (LL#03). The notice is signed and dated for 07-January-2022 with a termination date for 30-April-2022. The landlord said he delivered it in person on 07-January-2022 and placed it in the tenant's hand.
11. The landlord said that his mother-in-law lives out of town and she required medical care in St. John's. The landlord said that he approached the tenant and said would he consider moving. They had a verbal agreement that the tenant would move out after Christmas for January. In January the tenant continued to live there so the landlord said he decided to give the tenant a standard three month notice as stated above.
12. The landlord said that there had been issues ongoing with the tenant, where he becomes intoxicated and starts banging on the walls and yelling. The tenant has also been aggressive with the other tenant downstairs. He has banged on his walls and windows. Due to this behavior the landlord gave the tenant a Section 24 termination notice (LL#04). This is the second notice that the landlord gave to the tenant and it is signed and dated for 03-April-2022 with a termination date of 09-April-2022. The landlord said he also delivered this notice personally on the day signed and placed it in the tenant's hand.
13. The landlord said he kept notes of when the tenant's behavior was impacting the other people living there as follows:
 - 17-September-2021: tenant intoxicated, loud banging noises, late at night, police called: file # 21-50783
 - 25-September-2021: tenant disruptive, landlord called the police: file # 21-51695
 - 15-October-2021: loud noises from the tenant, landlord called tenant, eventually he settled down.

- 27-November-2021: tenant shouting and cursing in the driveway, landlord called him and spoke with him, eventually he settled down again.
 - 27-January-2022: tenant banging on the wall and doors of the adjacent apartment, landlord's wife called him, eventually he settled down
 - 11-February-2022: tenant shouting and arguing with an unknown person after midnight, an ambulance arrived.
 - 17-February-2022: tenant outside in the driveway, banging on the house and other tenant's apartment, landlord called police: file # 22-8822
 - 02-April-2022: tenant creating noise inside and then outside in the driveway against the other tenant, during the afternoon, landlord called police: file # 22-15252
 - 11-April-2022: tenant shouting and loud in the apartment 1:30 AM
 - 25-April-2022: tenant shouting and loud in the apartment 1:00 AM
14. The landlord said he recently retired, he lives with his wife and daughter and their sleep is being disrupted. They both then have to go to work in the morning. He said that the other tenant has threatened to leave and he is surprised that he is still able to live there.
15. The landlord is seeking vacant possession.

Analysis

16. The first termination notice served on the tenant is a Section 18 notice. Section 18 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.

.....

(9) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the person providing the notice;

(b) be given not later than the first day of a rental period;

(c) state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and

(d) be served in accordance with section 35.

17. This notice does meet the requirements of the Act and is a valid notice: the tenant should have moved on or before 30-April-2022.
18. The landlord also served the tenant with a Section 24 termination notice for interference with peaceful enjoyment and reasonable privacy. Statutory condition 7.(a), set out in section 10.(1) of the *Residential Tenancies Act, 2018* states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

...

7. Peaceful Enjoyment and Reasonable Privacy -

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.

....

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.

19. I accept the landlord's testimony of his ongoing record of his experiences with this tenant and I find that the tenant is interfering with the peaceful enjoyment of other's in the house. The landlord's notice is dated for 03-April-2022 with a termination date of 09-April-2022 and was personally delivered on the day it was signed. 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.

20. The termination notice meets the requirements of the *Act* and is a valid notice, as the day of termination falls before the day of the first termination notice, and as it was served after the first notice: I find that the tenant should have moved on or before 09-April-2022.

Decision

21. The tenant shall vacate the premises immediately.
22. The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sherriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession.
23. The landlord is granted an Order of Possession.

Issue 2: Hearing expenses reimbursed \$20.00

24. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#05) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant. The tenant shall pay to the landlord \$20.00 for reimbursement of the cost of filing this application.

Summary of Decision


25. The tenant shall:
- vacate the premises immediately.
 - pay to the landlord \$20.00 for reimbursement of the cost of filing this application.
 - pay to the landlord any costs charged to the landlord, by the Office of the High Sherriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession.

The landlord is:

- Granted an Order of Possession

May 11, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office