

Residential Tenancies Tribunal

Application 2022-No.266-NL
2022-No.343-NL

Decision 22-0266-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:04 a.m. on 24-May-2022
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.

Preliminary Matters

4. The tenant submitted an affidavit (TT#01) stating that he served notice to the landlord on 13-May-2022. The landlord also submitted an affidavit (LL#01) stating that she served the tenant with notification of the hearing on 12-May-2022 electronically. Both parties confirmed that they received notification as stated.

Issues before the Tribunal

5. The tenant is seeking validity of termination.
The landlord is seeking vacant possession of the rental premises.
Both parties are seeking reimbursement of their hearing expenses.

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 10: Statutory conditions and Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy.

Issue 1: Validity of termination notice**Issue 2: Vacant Possession of the Rental Premises**Landlord's Position

8. The landlord provided a copy of the rental agreement (LL#02). The landlord said that the tenant took occupancy on 15-February-2022 and he has a term agreement until 01-March-2023. The landlord said that the tenant's rental period is from the first day of the month, until the last day. The landlord said that the tenant's rent of \$795.00, which includes internet, and is due in full on the first day of the month. She said that the tenant receives income support which comes in three separate payments throughout the month; she is in agreement with receiving the rent this way. She said that the tenant paid a security deposit of \$596.25 and she is in possession of the deposit.
9. The landlord said that she was receiving complaints that there was the smell of cigarette smoke coming from the tenant's apartment. The landlord said that the house has three apartments, one on each level. The tenant's apartment is on the first floor and that people enter the house next to his apartment door then there is a stairwell to the upstairs apartments.
10. The landlord said that the individual in the second floor apartment was contacting her frequently about the smell of smoke. The landlord said that the tenant in the third floor apartment is a smoker; however he goes outside to smoke.
11. The landlord said that when the tenant in the middle apartment contacted her about the smoke, she contacted the tenant. She provided the tenant's text message (LL#05) where he apologizes and said that he had a friend over. He said that the friend didn't know that they couldn't smoke and there shouldn't be any more problems. The landlord tells him to make sure that the smokers go outside to smoke.
12. The landlord said that the tenant's girlfriend is the smoker and although she isn't on the lease; she thought that the girlfriend was living with the tenant.
13. The landlord said that the rental agreement (LL#02) part 11, states that there is to be no smoking.
14. The issue has not been resolved, the landlord provided a text thread (LL#04) with the tenant on the second floor which shows he contacted her about smoke on: 08-March-2022, 11-March-2022, 15-March-2022, 11-April-2022, 19-April-2022, 22-April-2022 and 26-April-2022.
15. The landlord said that the 2nd floor tenant also contacted this board, and she entered his email into the evidence (LL#07), he inquired what could be done in protection of his rights.

16. The landlord submitted a "Landlord's notice to terminate early – Cause, for interference with peaceful enjoyment and reasonable privacy" (LL#03). The landlord signed and dated the notice for 28-April-2022 with a termination date of 04-May-2022. The landlord said she posted the notice on the door and she also sent a copy electronically on 28-April.2022.
17. The landlord said that the tenant is still living there. She is seeking an Order of Possession.

Tenant's Position

18. The tenant agrees with the terms outlined in the rental agreement by the landlord. He said that his income support paid \$372.00 towards his security deposit and he paid \$225.00, which totals \$597.00 instead of the landlord's total of \$596.25.
19. The tenant acknowledges that the apartment rules state no smoking.
20. The tenant said that he doesn't smoke. He said his girlfriend does smoke, but she doesn't live at the apartment.
21. The tenant said he likes to keep the windows open, but it isn't to air out smoke, it is for fresh air.
22. The tenant questions how it can be determined that his apartment is the cause of the smoke, when there is another apartment, with a smoker, in the building.

Analysis

23. Section 10 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:

...

2. Obligation of the Tenant - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

....

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.*

....

24. The landlord has shown with that the tenant is in violation of part 11 of his rental agreement (paragraph 13). Although the tenant is not a smoker, the evidence of ongoing complaints from the upstairs tenant that there is a smell of smoke coming from the apartment, as well as, the tenant stating that his girlfriend is a smoker and the text saying she had been smoking in the apartment (LL#05). I find the guest of the tenant is smoking in his rental unit, which violates his agreement. As outlined in the Act, the tenant is not only responsible for his behaviour, he is also responsible for the actions of those he permits on the property. I find that the tenant is interfering with the peaceful enjoyment of the other tenants by permitting his guests to disregard the no smoking rule.
25. A termination notice for interference with peaceful enjoyment, falls under Section 24 , of the *Residential Tenancies Act, 2018*, as follows:

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.

26. The notice served to the tenant, meets the requirements outlined in the *Act* and is a valid notice, the tenant should have moved on or before 04-May-2022.

Decision

27. The landlord's claim for vacant possession of the rental premises succeeds.

Issue 3: Hearing expenses reimbursed \$20.00

28. The landlord (LL#08) and the tenant (TT#04) submitted the receipt for \$20.00 for the cost of the hearing (LL#04). The landlord was successful in her claims and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

29. The tenant shall vacate the premises immediately.
30. 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.
31. The landlord is granted an Order of Possession.
32. The tenant shall reimburse the landlord for the cost of the hearing expenses \$20.00.

May 27, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office