

Residential Tenancies Tribunal

Applications: 2022 No. 0307 NL

Decision 22-0307-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:17AM on 18 May 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "landlord1", participated in the hearing. The applicant's wife, [REDACTED], hereinafter referred to as "landlord2" also participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate in the hearing.
4. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served of the claim against her.
5. The details of the claim were presented as a fixed term rental agreement set to run until 30 November 2022. A copy of the written rental agreement was provided (L#2). Monthly rent is \$750.00 and a security deposit of \$500.00 was collected.
6. 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 have to establish that their account of events is more likely than not to have happened.

Issues before the Tribunal

7. The landlord is seeking the following:
 - Validity of the termination notice and
 - An order for vacant possession.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
9. Also relevant and considered in this case are sections 10 and 24 of the *Act*, policy 7-005 Interference with Peaceful Enjoyment and Reasonable Privacy, and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

10. The tenant was not present or represented at the hearing and I was unable to reach her by telephone. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
11. 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 she has been properly served.
12. As the tenant was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

13. The rental premises is a split level single family dwelling located at [REDACTED] [REDACTED]. There is a main floor apartment and a basement apartment. The tenant was expected to occupy the two bedroom basement apartment by herself with her two children. There is a large driveway at the rental premises with rights to the driveway split down the middle with allowance for up to two cars for each set of tenants.
14. Landlord2 testified to the history of the rental agreement with the tenant. She spoke of her relationship with the tenant's mother who had been actively involved in supporting the tenant, both financially and otherwise. Landlord2 testified that the tenant's mother frequently paid rent on behalf of the tenant, but that they had a falling out and that rent for May 2022 has not yet been paid. Landlord2 testified that when she agreed to rent to the tenant, the tenant was pregnant and unemployed.

15. Landlord2 testified that she and her husband, landlord1, regularly attended the rental premises between December 2021 and April 2022 to complete renovations in the main floor unit of the rental premises. She testified that they tried their best to be respectful of the tenant and her young children and that they would only use power tools after 10am.
16. Because the landlords were renovating the main floor unit of the apartment they became far more aware of the activities of the tenant in the basement unit than would normally be expected. Landlord2 testified that since a new tenant moved into the main floor apartment, in late April, that landlord1 has attended the rental premises on a single occasion to provide something to the main floor tenant.
17. The landlords issued a notice of termination notice, under section 24 of the Act, to the tenant in the downstairs unit on 14 April 2022 (L#3). The stated move out date was identified as 20 April 2022. Landlord2 testified that the notice was served via text to the tenant and that a copy was also placed in the mail box on the day it was issued.
18. Landlord2 provided a comprehensive overview of the evidence along with an Evidence List that summarized the reasons for each piece of evidence submitted (L#4) supporting why they had issued a termination notice to the tenant,
19. Landlord2 testified that they first became concerned with the tenant in February 2022 when they noticed a white vehicle constantly parked at the rental premises. She provided a screengrab of text conversations between herself and the tenant where she requested that the white car be moved so that herself and landlord1 can come and go at the rental premises in the course of their renovating the main floor unit of the rental premises (L#5).
20. Because the landlords rented their downstairs unit to a single mother and her two children, they expected only 1 vehicle to be permanently associated with available parking at the rental premises. Landlord2 testified that the tenant stated the white car is not actually her car. Despite this, the white car was duly moved to the tenant's side of the driveway and there it remains parked. Landlord2 provided a picture of three cars, including the white car parked in the driveway in April and May 2022, meant to highlight their concerns with this white car causing ruts in their newly paved driveway (L#6).
21. Matters then escalated on 12 April 2022 when landlord1 texted the tenant to request that the red car parked along the roadway blocking part of the driveway be moved. Landlord2 provided a picture of the driveway as blocked by the red car (L#7), which was said to be owned by an unknown and unapproved adult occupant of the downstairs unit. Landlord2 then testified that she contacted the tenant to have the car moved by text and by placing a written note (L#14) on the tenant's door. Because the car was not moved, and she knew the tenant was home, she then made contact with the tenant's mother.

22. From this contact with the tenant's mother, landlord2 testified to the following:

- The unknown male in the downstairs unit was a known criminal who is not to have contact with the tenant and the tenant's children.
- The tenant's mother called municipal enforcement regarding the red car blocking the driveway to the rental premises.
- The tenant's mother also called the Child Protection unit to report that the known criminal was residing in the downstairs tenant's rental premises.

23. Landlord2 submitted into evidence a photo taken from the main floor of the rental premises. This photo depicted the enforcement official attending to the red car as it blocked the landlord's vehicle (parked on their side of the driveway) (L#8). Landlord1 testified that the enforcement officer was ready to issue a ticket to the red car but that he convinced him not to so as to not further disturb the relationship with their relationship with the tenant.

24. Landlord2 submitted into evidence documentation she found regarding how the male occupant had been "unlawfully at large for resisting arrest and assaulting RCMP officer in [REDACTED]" earlier this year (L#9). She also testified that the tenant had allegedly harboured the male during this time.

25. Specific to 12 April 2022, landlord2 testified to hearing an explosive tirade from the downstairs of the rental premises, including multiple expletives on "who the %^&* called social services". It was shortly after this, that a threatening handwritten note was placed on the windshield of landlords' vehicle (L#10). The note read: "You fucking Rat. FYI. Your (sic) brain dead. Call them again I dare Y".

26. Landlord2 testified that they knew the note came from the downstairs unit because it was written on a piece of the envelope upon which the L#14 note to request the red car be moved, had been written. She testified that she and her husband were devastated by the note, that they are seniors, they had just found out that a known criminal was residing in their downstairs unit, without their approval nonetheless, and that someone was saying they are brain dead, which they interpreted as "someone is going to knock/blow our brains out".

27. The landlords then attended the local RCMP office to seek support. As evidence to this tribunal, landlord2 submitted the related police report Occurrence Details (L#11) and also subpoenaed the attending Constable who appeared at the hearing to provide testimony (L#12).

28. Constable [REDACTED] was sworn in as a witness. The Constable testified that she believed the claims put forward by the landlords and recognized their concern for their physical safety in returning to the rental premises that they legally own and operate as a two unit rental. The Constable provided testimony that was identical to that provided by landlord2 regarding the events of 12 April 2022. The Constable spoke further of how she followed up with the landlords later that same day to assess how they were feeling following their receipt of the

threatening note on their windshield. The landlords at first did not want the Constable to follow up directly with the downstairs tenant and fellow occupants regarding the note, but eventually decided that the Constable should.

29. The Constable testified that she had reflected on her own days as a tenant when she spoke directly with the downstairs tenant and her guests on 13 April 2022. The Constable said she emphasized the importance of being respectful, maintaining good communication between themselves as tenants and the landlord and suggesting that they find a 3rd party if they were ever uncomfortable dealing with their landlord. The Constable testified that she discussed the note that was left on the windshield and how that could lead to criminal trouble, should that kind of behaviour continue. The Constable further testified to her positive feelings that there was a good understanding from the downstairs tenant and her guests of what was discussed.
30. When asked by landlord2 if the downstairs tenant and her guests denied leaving the note on the landlord's car, the Constable testified that the tenant and her guests initially believed the landlords were responsible for calling enforcement about the red car.
31. The Constable testified that she did not specifically ask who produced the note that was left on the landlords' windshield because it was believed that the note came from their rental unit due to the paper upon which it was written, having been part of the same envelope that was previously delivered to the tenant.
32. The landlords issued the termination notice the following day, despite signs of likely progress and resolution in the relationship between the tenant and the landlords, because of a text landlord2 received from the tenant on 13 April 2022 (L#13). This text read in part:

You are by far the most invasive, nosiest landlord I have ever had. Don't ever chase me down the driveway and bang on my door like that against because you won't like the outcome.
33. Regarding events at the rental premises since the termination notice was issued, landlord2 testified that other than one large fight (between occupants in the downstairs unit which led the second female inappropriately residing in the unit to move out) shortly after the new tenant moved in, there have been no concerns reported. Landlord2 further testified that the main floor tenant had reported speaking with the unapproved male occupant in the downstairs unit who indicated they were vacating the rental premises at the end of May 2022.
34. Landlord2 testified that the tenant has since interfered with the move-in process of the main floor tenant by blocking access to the back garden where the main floor tenant had been intending to store his ski-doo, quad and other large items. This meant that the main floor tenant had to leave his personal possession at his previous residence.

Analysis

35. To issue a termination notice under section 24 of the Act, Interference with Peaceful Enjoyment and Reasonable Privacy, a landlord must be able to establish, on the balance of probabilities, that the tenant unreasonably interfered 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.
36. According to Residential Tenancies Policy 07-005, Interference with Peaceful Enjoyment and Reasonable Privacy, interference is defined as an ongoing unreasonable disturbance or activity, outside of normal everyday living, caused by the landlord or the tenant or someone permitted on the premises by the landlord or the tenant. This includes any unreasonable disturbance that interferes with right of the landlord to maintain and manage the rental property. The policy further identifies that unreasonable disturbances interfering with peaceful enjoyment and reasonable privacy may include, but is not limited to the following: (i) excessive noise; (ii) aggressive or obnoxious behaviour; or (iii) threats and harassment.
37. As identified in paragraphs 19, 20 and 22, guests of the tenant repeatedly parked their vehicle in the driveway designated for the upstairs unit. The tenant and guests of the tenant were confrontational with the landlords when asked to move the vehicles and continued thereafter to park in the space designated for the upstairs unit. I find this action unreasonable which obstructed the landlords from undertaking repairs to the upstairs unit and interfered with the rights of the tenant who occupied the upstairs unit.
38. Further, as identified in paragraph 24 and supported by testimony of Constable [REDACTED], I find it is more likely than not, that the tenant and guest of the tenant were responsible for leaving the intimidating note on the landlords' windshield. I find this demonstrates aggressive and obnoxious behaviour which constitutes interference with peaceful enjoyment as identified in policy.
39. Additionally, as identified in paragraph 30, and supported by the submission of text messages from the tenant to the landlord, I find the tenant continued to engage in unjustifiable aggressive and obnoxious communication with the landlord; thereby further obstructing the landlords' reasonable undertaking of activities to maintain the property and address the complaints of other tenants.
40. As identified in paragraph 32 and given no evidence to the contrary, I accept landlord2's testimony that the downstairs tenant and guest of the tenant subsequently interfered unreasonably with the peaceful enjoyment of the upstairs tenant by blocking access to the back garden where the main floor tenant intended to store his recreational vehicles.

41. A termination notice issued under section 24 of the *Act* must also meet the following requirements as set out in the *Act*:

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.

42. As the notice meets all the requirements set out in this section of the *Act*, and as it was properly served, it is a valid notice

Summary of Decision

43. The landlord is entitled to the following:

- An order for vacant possession of the rented premises,
- The tenant shall pay to the landlords 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.

27 May 2022

Date

Jaclyn Casler
Residential Tenancies Board