

Residential Tenancies Tribunal

Applications: 2022 No. 0310 NL

Decision 22-0310-00

Jaclyn Casler
Adjudicator

INTRODUCTION

1. The hearing was called at 9:11AM on 17 May 2022 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. His property manager, [REDACTED], hereinafter referred to as "the property manager" also participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", participated 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 him.
5. The details of the claim were presented as a fixed term rental agreement set to expire on 1 November 2022. A copy of the written rental agreement was provided showing that \$625.00 security deposit was collected and is being held by the landlord (L#2).
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:
 - 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 is section 10, 21 and 24 of the *Act* and policy 7-005 *Interference with Peaceful Enjoyment and Reasonable Privacy*.

PRELIMINARY MATTERS

10. The landlord resides in [REDACTED] and relies upon a local property management company to look after the daily operations of his [REDACTED] unit apartment building located at [REDACTED]. The units are grouped into different sections, and the tenant's specific unit ([REDACTED] shares a commercial grade exterior door with units [REDACTED] and [REDACTED]).
11. The landlord submitted a witness affidavit on behalf of his property manager, [REDACTED] (L#3). I asked if it was possible for [REDACTED] to join the teleconference as a participant and she did.
12. The tenant was supported during the hearing by a hospital based peer worker ([REDACTED]) and a psychiatric nurse ([REDACTED]). Both women were in the room with the tenant during the hearing. However, neither spoke nor could be heard in the background.

ISSUE 1: VACANT POSSESSION

Landlord's Position

13. The landlord testified that the property manager secured the tenant, as a tenant, and that his monthly rent is paid 50% by Newfoundland Labrador Housing and 50% by Income Support. These payments are received automatically through direct deposit on the first of every month. The landlord testified that rent is paid in full and that there is a zero dollar balance on the tenant's account.
14. The landlord introduced the Termination notice that was issued on 7 April 2022 (L#4) and served to the tenant by being pasted on his door that same day. The notice was issued under section 24 of the *Act* for *Interference with peaceful enjoyment and reasonable privacy*. The stated move out date for the notice was 30 April 2022.
15. The landlord identified the following reasons for the termination notice:
 - a) Safety of the property manager;
 - b) The tenant was operating a tattoo shop out of his rental unit;
 - c) The tenant had an unapproved person (a man) residing within him in his one bedroom apartment;

- d) The police were called on multiple occasions to attend the rental premises in response to the tenant; and
- e) The tenant knocked on the doors of other tenants and interfered with others by speaking of illegal weapons.

16. Each of these reasons are discussed in turn.

Safety of the Property Manager

Landlord's Position

- 17. The landlord relies on the property manager for building operations and safety.
- 18. The landlord and property manager highlighted an incident where the tenant locked himself out of his unit (but could access the rental premises because of there being no lock on the shared exterior door). When I asked the property manager to tell me about her experience of issuing the 7 April 2022 Termination Notice to the tenant, the property manager stated that she "does what she is told" and spoke generally of how the tenant had "threatened to kick down his door" after he reached out for support getting in his unit and the property manager was not available.
- 19. The landlord submitted into evidence an affidavit from the property manager (L#3) as well as texts between the tenant and property manager.
- 20. As per this affidavit, the tenant allegedly threatened to kick down the door to his rental unit (because he was locked out) and then "bombarded" the property manager with messages. After this, the property manager then "taped an eviction notice" to the tenant's door with the support of a town enforcement official because the property manager wrote that "I feel very unsafe coming into contact with (the tenant)".
- 21. The landlord testified that the 7 April 2022 termination notice was given for safety concerns, specifically concerns for the safety of the property manager.
- 22. We reviewed the lengthy text chain that was said to have occurred prior to the issuance of the 7 April 2022 termination notice. In this text chain, the tenant writes how he does not feel safe because of the doors at the rental premises and how "sometimes I have trouble distinguishing between what's real and what isn't like because of the [REDACTED] D ([REDACTED])" (see page 2 in L#6).
- 23. As evidence of the highlighted incident mentioned above, we looked specifically at page 4 of the text chain document (L#6) where the property manager wrote: *"Please stop locking yourself out, I'm not always available to let you in right away and since you've threatened to kick the door down already, you should put a key outside somewhere. And if you do and I'm not around, you'll have to call the locksmith".*

24. We also reviewed screenshots of posts made by the tenant in a public Facebook group called "██████████" regarding the landlord. The tenant writes in these posts that he experienced a break in and assault and that his "landlord did not care" and "landlord hasn't even looked at my door" and seemed to have tagged the property manager (page 9-10 in L#6).
25. The landlord also submitted into evidence a letter dated 18 April 2022 that was signed by himself and addressed to the tenant (L#11). This letter refers to a second termination notice that was issued to the tenant on 18 April 2022 under section 21 of the Act for *Premises Uninhabitable* (L#10). This letter states in part:

"Furthermore, to the notice provided to you on 4/7/2022, it has been brought to our attention that you have disregarded this prior notice. You have "defamed" the landlord and real estate agent (property manager), "vandalized" the property, and generally disrupted building operations".
26. The landlord testified that the property manager is no longer the legal point of contact for the tenant and that tenant has been provided contact information for his new property management contact. I confirmed this with the tenant and he agreed that he has the proper contact information.

Tenant's Position

27. The tenant emphasized that the shared exterior door does not lock, meaning that a tenant who forgot his keys can get in the building but cannot enter his own unit.
28. The tenant stated that he suffers from ██████████ and acknowledged that he is liable to do things he would not normally do, when in the heat of the cycles of this disease. The tenant also testified that he is physically disabled, and that if you looked at him, you could see that he would not be able to "kick down a door if he tried".
29. Referring to the abovementioned text chain, the tenant writes (after receiving the 7 April 2022 Termination notice) that he may "put a complaint in at [business name of property manager] over your unprofessional words towards me and the way that you were talking to me like that's unacceptable I have a disorder you disorder (sic) you know" (see page 4 in L#6). The tenant also wrote that "I'm scared for my damn life" (see page 5 in L#6).
30. The tenant testified, that because he is disabled, he is especially concerned for his physical safety while living in a rental unit that has no locked exterior door, leaving him with only a regular residential door for protection.
31. The tenant stated that he has requested on multiple occasions that the property manager/landlord provide a lock on the commercial door that is shared by himself and the tenants of two other rental units. However, these requests have been denied by the landlord and property manager and this denial was repeated by both during the hearing.

32. The property manager testified that this exterior lock was broken at the time the tenant first moved into the rental premises. When asked why the tenant was provided a key for a lock that did not exist/function, the property manager stated that the 3rd key was "on the set".
33. The tenant testified that he no longer maintains the Facebook account referenced in the evidence provided by the landlord and property manager.

The Tenant Operated a Tattoo Shop

Landlord's Position

34. The landlord submitted screenshots of online postings for the tattoo business that the tenant was operating out of his rental premises (L#5). Operating a tattoo business is contrary to the requirements of the rental agreement that require residential use only of the rental unit (L#2).

Tenant's Position

35. The tenant stated that he was unaware that he was prohibited from operating a tattoo business out of his rental premises. He testified that his tattoo equipment is all packed up and that his business is now marked as closed online.
36. The tenant stated that he was previously a property manager in Alberta, and that his general practice was to first send warning notices to tenants who were operating contrary to written rental agreements.

Unapproved Occupant in 1 Bedroom Unit

Landlord's Position

37. The landlord testified that the tenant had an unapproved male resident living in the rental unit with him despite the rental agreement stating that the rental unit was to be occupied by the tenant only (L#2).

Tenant's Position

38. The tenant provided no specific comment on the second male.

The Police Were Called

Landlord Position

39. The landlord provided written documentation related to the police within a request for an immediate order without a hearing that he submitted to the Director of Residential Tenancies on 19 April 2022 (L#7). The landlord writes in this request that the 7 April 2022 termination notice was given for "breach of his lease under terms of interference with peaceful enjoyment of the other tenants".
40. Specific to the chronology of police visits to the rental premises:
 - The police were called at 10am on 16 April 2022 for a break and enter but did not notice signs of a break-in and allegedly reported back to the landlord on the tenant's state of intoxication.
 - The police were called again at 7pm on 16 April 2022 and found significant damage to the front door of the tenant's own unit. The tenant and another man were apparently arrested for assault with a weapon.
41. A police report number was cited for this second incident on 16 April 2022 but no file summary was provided. The landlord indicated that he could provide the files summary if necessary once I informed him that it was not the job of the adjudicator to contact the police for clarification.

Tenant's Position

42. The tenant testified that the police were called in response to a break and enter at his rental premises. He further testified that this event left him badly injured and also resulted in significant damage to the door of his rental premises.
43. I note that when the tenant's own unit door was broken during the alleged break-and enter. I note that evidence provided by the landlord showed a prompt response from the property manager to the concerns from the tenant for the broken rental unit door (see page 8 in L#6).
44. The tenant testified that residing behind an unlocked exterior door and a broken door to his rental unit was especially worrisome.

The Tenant Knocked on Doors/ Interfered with Others

Landlord's Position

45. The landlord submitted two witness affidavits as evidence of the tenant's interference with other tenants in the rental premises. I noted during the hearing that both affidavits were prepared by a singular tenant, and that they referred to events of 18 April 2022 (L#8) and events of 21 April 2022 (L#9). These affidavits identified the following:

- Concern for the tenant's perceived intoxication levels;
- Concern for the tenant's comments about possessing weapons in response to a very recent break in; and
- Concern for the tenant talking about death threats the tenant had received.

46. The landlord testified that the tenant is not an immediate neighbour of the tenant in this dispute (he does not share an exterior door with the tenant), but that his door is visible from the tenant's exterior door.

Tenant's Position

47. The tenant testified that believed he had good relationships with the other tenants in the rental premises. He spoke about his [REDACTED] and indicated, that if he knocked on doors, it was because he was seeking help only.

ANALYSIS

48. 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.

49. 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.

50. As identified in paragraphs 17-21, the landlord claimed the tenant interfered with the property manager causing safety concerns as a result of perceived threats and harassment. However, the evidence provided by the landlord and property manager regarding this claimed interference, was unconvincing. In particular, the text chain where the tenant allegedly "bombed" the property manager, prompted more empathy from me for the tenant, than fear. This was because the tenant comes across as someone who is very upfront about his [REDACTED] and trying only to communicate his needs.

51. The tenant was soft spoken and polite for the duration of the hearing on 17 May 2022 and responded appropriately when provided with direction. This behaviour was in contrast to that of the landlord, who frequently interrupted the tenant

during his testimony. I also found the behaviour of the property manager to be surprising as she did not appear to hesitate to join the hearing when asked by the landlord, despite the tenant also being on the line. This was notable because most commonly when persons claim fear for safety concerns against other parties, they are reluctant to testify and or even appear on the same conference line as the named party.

Notice where tenant contravenes peaceful enjoyment and reasonable

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.

55. Taken together, the evidence and testimony put forward by the landlord and property manager does not convincingly establish that the tenant violated statutory condition 7(a) found in section 10 of the *Act* at the time the 7 April 2022 termination notice was issued. This section of the *Act* reads as follows:

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.

56. In sum, I do not accept on the balance of probabilities that the tenant unreasonably interfered with the landlord and property manager. As such, I deem the termination notice issued to the tenant on 07 April 2022 to be an invalid notice because it did not meet as requirements as set out in section 24 of the Act.

DECISION

57. The landlord's claim for vacant possession, in response to a notice of termination issued for unreasonable interference with peaceful enjoyment and reasonable privacy, does not succeed.

SUMMARY OF DECISION

58. The landlord is not entitled to an order of vacant possession.

27 May 2022

Date



Jaclyn Casler
Residential Tenancies Tribunal