

Residential Tenancies Tribunal

Application 2022-No.327-NL
2022-No.344-NL

Decision 22-0327-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:13 p.m. on 19-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.
4. The landlord presented two witnesses [REDACTED] and [REDACTED], hereinafter referred to as “witness1 and witness2.”

Preliminary Matters

5. The tenant was not present or represented at the hearing and I reached her by telephone at the start of the hearing and she informed me that she would not be attending. 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 she 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, by text-message, on 02-May-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 her absence.

Issues before the Tribunal

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

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 24: Notice where a tenant contravenes peaceful enjoyment and reasonable privacy.

Issue 1: Vacant Possession of the Rental Premises

Relevant submissions

9. The landlord said he had a verbal rental agreement with the tenant. The tenant moved in 01-October-2021. They have a monthly agreement from the 1st day of the month until the last. She pays \$850.00 a month which included utilities. The tenant paid a \$600.00 security deposit on 10-November-2022, the landlord is still in possession of the deposit. The landlord provided the written terms of the agreement into evidence (LL#02).
10. The landlord said that there were issues with the tenant and she had given him a termination notice. She did not move. As he was receiving complaints from other tenants in the house, he then gave her a termination notice for interference with peaceful enjoyment and reasonable privacy. The notice is signed and dated for 26-April-2022 with a termination date of 02-May-2022. The landlord repeatedly told this tribunal that he served her this notice on 02-May-2022.
11. The landlord said he had received complaints about issues with the tenant. He said that she would bring back people after the clubs closed downtown and they would be loud and disruptive until early morning hours. He said that someone kicked her door in and threw coffee at the house.
12. Witness1 said she referred to her text messages as record of the ongoing issues as follows:
 - 09-December-2021 tenant asked could her boyfriend park in the driveway, they agreed
 - 17-December-2021 tenant asked again could her boyfriend park in the driveway, that night someone slashed his tires. All the other vehicles were untouched.
 - 10-February-2021 4:08 a.m. she received a text apologizing as there was a lot of yelling and screaming going on in the tenant's apartment. Witness1 texted back and forth with her and this continued until 5:14 a.m.
 - 11-March-2022 in the afternoon the police came to their apartment and spoke with witness2, they were inquiring about the tenant and had told him that there were complaints from neighbors about her
 - 11-March-2022 she received another text apologizing because the tenant's baby's father and his girlfriend had kicked in her door and were being loud.

- 22-April-2022 at 1:09 she could hear the tenant's child crying. She started texting the tenant and wasn't getting an answer. She went downstairs and started banging on the door, still no answer. Finally, she called the landlord and he came by, at that time the tenant came to the door with the baby in her arms. This was ongoing until 1:59 p.m. At the time, the tenant thanked witness1 for caring enough to check on them. Later she questioned why witness1 would involve the landlord. Witness1 said she told her she had to call him or the police, she was worried that she was going to find the tenant dead.
 - 25-April-2022 she said that the tenant told the landlord she was out looking for an apartment, but she never left her apartment all day.
 - 03-May-2022 the tenant texted and asked they not throw garbage in her container.
13. Witness2 said that they are quiet people. He works long days and gets up at 5:00 a.m. for work.
14. Witness2 said that there is a lot of late night traffic in and out of that apartment. He said that this isn't only on the weekends but also during the week. He said that when she is disruptive she does apologize, however, the behavior continues.
15. Witness2 said that there is only so much they can take, they have a small child and have to work in the mornings.

Analysis

16. A termination notice must be served in accordance with the Act. 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.

17. The landlord was repeatedly asked what day did you serve the tenant notice of termination. He repeatedly stated that he served this notice electronically on 02-May-2022.

18. The notice of termination as shown in paragraph 10, has a termination date of 02-May-2022. The *Act* requires not less than 5 days' notice. A valid termination notice cannot be served to a tenant on the day she is to move.
19. The notice was not served in accordance with the *Act*, and is therefore not valid.

Decision

20. The landlord's claim fails.

Issue 2: Hearing expenses reimbursed \$33.80


21. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#04) and a receipt for photocopying of evidence for \$13.80 (LL#05). Pursuant to policy 12.01, as the landlord's claim fails, he is not entitled to reimbursement of that cost from the tenant.

Summary of Decision

22. The termination notice with a termination date of 02-May-2022 is not valid.

May 24, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office