

Residential Tenancies Tribunal

Applications: 2022 No. 0347 NL

Decision 22-0347-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:06AM on 07 June 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 “tenant1”, participated in the hearing. The respondent’s husband, [REDACTED], hereinafter referred to as (tenant2) did not participate in the hearing due to a work conflict.
4. An affidavit of service was provided by the landlord (L#1) confirming that each tenant was served by registered mail of the claims against them on 10 May 2022. A review of the tracking number associated with the package sent to the tenants indicates that it was picked up on 14 May 2022.
5. The details of the claim were presented as a month-to-month rental agreement that started on 15 June 2021. Monthly rent was set at \$1,650.00 and a security deposit in the amount of \$825.00 was collected and is being held by the landlords. There was no written rental agreement.
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

- The landlord is seeking an order for vacant possession.

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* (the *Act*).
8. Also relevant and considered in this case are sections 10 and 24 of the *Act*, Residential Tenancies Policy 07-005, Interference with Peaceful Enjoyment and Reasonable Privacy, and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

9. Tenant1 was present on the teleconference and testified that she was representing her husband, tenant2. 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 respondents have been properly served.
10. As tenant2 was properly served, and any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in his absence.
11. The landlords reside in in [REDACTED]. They testified that they listed the rental premises for sale in summer 2021 while also posting it for rent online. Specific to the rental agreement that is the subject of this dispute, the landlords testified that they briefly retained the services of a local property management company from February 2022 through to 3 May 2022. Testimony received from both parties indicated that a section 18 notice was issued to tenant1 and her family on 01 March 2022 with a stated move out date of 31 May 2022. There was also communication in February 2022 informing tenant1 that the house would be listed for sale once more.
12. Tenant1 testified that she took occupancy of the rental premises with her family under the assumption that she would be "renting to own". Tenant1 acknowledged that enforcement of "rent to own" agreements is outside of the scope of this tribunal as per Policy 01-008 Rent-to-Own and Option to Buy Agreements.

Issue 1: Vacant Possession of Rented Premises

Landlords' Position

13. The rental premises is a single family home located at [REDACTED]. It is a 3-4 bedroom home that was to be occupied by tenant1 and tenant2 and their two children, as well as a third child who was on

the way. Landlord1 testified that he flew to Newfoundland on 01 May 2022 after neighbours of the rental premises informed the landlords of a Uhaul having been onsite and a 30 April 2022 break-in. The police were called on 30 April 2022 and attended the rental premises. Landlord1 testified that he remained in Newfoundland until 14 April 2022.

14. The landlords subpoenaed two local constables as witnesses (L#2).
15. Constable [REDACTED] appeared as a witness. He testified that he is employed with the Criminal Investigations Unit and did not attend the 30 April 2022 police call in question but had access to the file and referred to it when questioned. Constable [REDACTED] testified that the file included the following information:
 - That one of the attending officers spoke with tenant1 who indicated that she had “moved out a week prior and was still gathering her things”;
 - That there was evidence of a break-in;
 - That there was a sticky substance all over the floor;
 - That the place was in disarray with limited belongings; and
 - That a single couch was the only piece of furniture.
16. Constable [REDACTED] testified that he attended the rental premises on 01 May 2022 in response to a call that “persons who were evicted were breaking back into the rental premises”. Once at the property, Constable [REDACTED] testified that he did not enter the house, but that he could see through the back windows that it appeared to be in disarray. He testified that he spoke with tenant2 who indicated that their family had until 31 May 2022 to vacate the rental premises. Constable [REDACTED] concluded his testimony by stating that he advised all parties to contact the landlord tenant office because the police were not able to offer assistance and the file was closed.
17. Landlord2 testified that tenant1 last paid rent in April 2022 and that no rent has been received for the month of May 2022 or June 2022. Landlord1 testified that tenant1 still has the keys to the rental premises. Landlord 2 testified that tenant1 ceased all communications with her in March 2022 and only began communicating again with the landlords after the 30 April 2022 break-in.
18. The landlords called [REDACTED] as a witness. She is a Manager with [REDACTED], the company that was briefly retained by the landlords for purposes of dealing with tenant1 and her family. [REDACTED] testified that no rent payments were received from tenant1 from the time April 2022 rent was received and [REDACTED] management was relieved of their services on 03 May 2022. [REDACTED] testified that tenant1 stopped responding to communications from her firm during that time as well. [REDACTED] responded to a question from tenant1 to confirm that she had no record of communication from tenant1 on 30 April 2022, the day of the documented break-in.
19. Landlord 1 testified that he attended the Mount Pearl Landlord Tenant Office on 09 May 2022 and filled out a Landlord’s Notice of Abandonment under the

guidance of his case manager (L#3). This notice of abandonment was then posted to the rental premises later that same day. Landlord1 also provided evidence of the text response from tenant1 (L#4) where she writes that the rental premises *"is not abandoned... we have filed a dispute against your 5 day peaceful enjoyment eviction notice. Until this goes to hearing we will maintain lawful possession of the property"*.

20. Following this text, landlord1 issued a termination notice to tenant1 and her family under section 24 of the *Act* for interference with peaceful enjoyment and reasonable privacy (L#5). This notice was issued on 10 May 2022 (by being taped to the door of the rental premises) and identified a stated move out date of 16 May 2022. The landlords also provided pictures from the interior of the house timestamped to 11 May 2022 showing that the fridge was empty and that the house did not appear inhabited by anyone, let alone two kids, a baby or two adults (L#6).
21. Landlord1 testified that he changed the locks at the rental premises and then the locks were changed back. When asked if tenant1 could access the rental unit with the keys currently in her possession, landlord1 stated that she could.

Tenant's Position

22. Tenant1 filed a counter claim (2022 No. 0376NL) against the original section 24 termination notice that was issued to the tenants on 02 May 2022 (L#7). This application was received by the Landlord Tenant office on 06 May 2022. Tenant1 testified that she wished to discontinue this application as the nature of the current hearing would determine the validity of the termination notice issued to her family.
23. Tenant1 testified to her discomfort and personal stress with the 30 April 2022 break-in that occurred at her property and the following unexpected attendance by landlord1 at her rental premises. She testified that she only ceased communicating directly with the landlords once they made it clear that tenant1 was to interact only with the property managers. Tenant1 also testified to her surprise in February 2022 when she was notified that the rental premises was being listed for sale.
24. Tenant1 provided two examples of screenshot conversations as evidence. The first screenshot was a text from landlord1 dated 01 May 2022 where he writes (T#1): *"I am at the house now. Come get your motorcycles. I'm getting a dumpster for the rest and having the truck gone for scrap"*. Tenant1 then responds later that same day: *"We'll be needing a new key to the locks or are we calling a locksmith at your expense"*.
25. Tenant1 also provided a screenshot of text communications dated 30 April 2022 and said to be with [REDACTED] representative, [REDACTED] (T#2). In this text chain, the property manager writes about the 30 April 2022 break-in and identifies plans to board up windows and change locks given that tenant1 had

stated she previously moved. Tenant1 responded to these texts by stating: “*I have it paid for so it’s still my home*” and “*That’s still my residence so I will need a key today*”.

26. Tenant1 testified that she paid landlord1 for May 2022 rent in cash while he was at the rental premises on 10 May 2022. When asked if she had proof of this cash payment, tenant1 stated that her witness who she was going to call as proof, was unavailable to join the call. Landlord1 denied receiving any cash payment from tenant1.
27. Tenant1 testified that she moved out the rental premises after 01 May 2022 because she felt intimidated by the actions of landlord1 and his friends who were attending the rental premises. Tenant1 testified that she still has some personal possessions at the rental premises but that she will abandon her claims for these possessions because she does not feel comfortable attending the rental premises to gather any remaining belongings.
28. Tenant1 provided her mailing address via email because she did not want the landlords to know where she is currently residing with her family.

Analysis

29. 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.
30. 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:
 - excessive noise;
 - aggressive or obnoxious behaviour; or
 - threats and harassment.
31. 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*

*(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.

32. As identified in paragraph 16 and supported by testimony of Constable [REDACTED], tenant1 informed the police on 30 April 2022 that she and her family had vacated the rental premises. Based on this information, landlord1 attended to his rental premises and took pictures that in no way depicted the interior of a household occupied by two adults, two children and a baby. The house did not appear occupied. Then, when landlord1 attempted to post a notice of abandonment to the house on 9 May 2022 (in accordance with section 31 of the Act) because for all intents and purposes he believed the house was rightfully abandoned, tenant1 disputed this notice. Because she disputed this notice, he issued an additional termination notice to her the following day under section 24 of the Act.
33. This conflicting series of events, along with evidence from tenant1 that she is currently residing elsewhere with her family and has been since 01 May 2022 after not paying rent for May 2022, is sufficient evidence for me to believe that tenant1 deliberately and continuously interfered with the rights of the landlords to manage their property (the rental premises) as they see fit.
34. As such, I find that the termination notice issued on 10 May 2022 under section 24 of the Act meets all requirements and as it was properly served, it is a valid notice.

Summary of Decision

35. The landlord is entitled to the following:

- An order for vacant possession of the rented premises; and
- An order that the tenants 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.

10 June 2022

Date

[REDACTED]
Jaclyn Casler
Residential Tenancies Board