

Residential Tenancies Tribunal

Application 2022-No.395-NL
2022-No.406-NL

Decision 22-0395-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:04 a.m. on 23-June-2022.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1 and tenant2” attended by teleconference.
3. The respondent and counter-applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference

Preliminary Matters

4. The tenants provided an affidavit (TT#01) stating that they served the landlord with notification of today’s hearing personally on 13-May-2022; the landlord confirmed this service.
5. The landlord provided an affidavit (LL#01 & LL#02) stating that she had served each of the tenants with notification of the hearing, by email on 24-May-2022; tenant1 confirmed this service.

Issues before the Tribunal

6. The tenants are seeking:
 - Validity of termination notice
 - Hearing expenses reimbursed \$20.00

The landlord is seeking:

- Premises vacated
- Hearing expenses reimbursed \$20.00

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 are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Section 19: Notice where failure to pay rent 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

9. The landlord provided the rental agreement held with the tenants (LL#02). She confirmed the details given by tenant1 as follows: the tenants moved in on 28-May-2021. They have a monthly lease that is from the first day of the month until the last. They pay \$800.00 a month which includes heat and light. The tenants paid a security deposit of \$400.00 on 28-May-2021 and the landlord is still in possession of the deposit.
10. The landlord served the tenants with two termination notices. The first notice (LL#04) is on a landlord's notice to terminate early form for failure to pay rent. The notice is signed on 17-May-2022 with a termination date of 29-May-2022. The second notice (LL#05) is also on a landlord's notice to terminate early form, for interference with peaceful enjoyment and reasonable privacy, it is signed on 17-May-2022 with a termination date of 24-May-2022. The landlord served these emails on 17-May-2022 electronically to the email provided on the rental agreement (LL#02) for communication.

Notice where failure to pay rent

11. The landlord said that tenant1 was arrested in early May and they had agreed with tenant2 that he could stay but she was not allowed to come back to the apartment. Tenant2 was unable to pay all the rent, so he paid \$400.00 and had agreed to pay the rest when he was paid.
12. The landlord said that they received a text from tenant2 saying that tenant1 was back and had nowhere to go and could she just stay for the night. They told tenant2 she wasn't permitted to live there.
13. The landlord said that she has not received rent since the \$400.00 payment in May. She said that the tenants are now in arrears for half of May and all of June.
14. The landlord served a termination notice for failure to pay rent on 17-May-2022 with a termination date of 29-May-2022.

Notice where tenant contravenes peaceful enjoyment and reasonable privacy

15. The landlord said that she owns the house and she rents upstairs to her son, his common-law wife and their children.
16. The landlord had her son and his common-law wife complete a Witness Affidavit, they are sworn by a Commissioner of Oaths and entered in evidence (LL#06). Her daughter-in-law's statement states that she was awakened by screaming the first week of May 2022, the RCMP were downstairs and there was a commotion. She says that her and her children have been awakened frequently by the fighting and noise downstairs. She goes on to say between 13 – 16 February, 2022 there was constant fighting and screaming throughout the night, waking the entire household.
17. The landlord's son's affidavit concurs with the first statement and also says that when the RCMP were there tenant1 was removed from the apartment.
18. The landlord said that the RCMP have been at the apartment countless times.
19. The landlord said that tenant2 is up gaming all night and there is fighting throughout the night.
20. The landlord said her son and daughter-in-law have frequently complained about sleepless nights and the impact on their children, due to the noise and fighting downstairs. She said that they have told her they are awakened at least once a week.
21. The landlord said that when tenant1 first viewed the apartment she presented well, however, the ongoing issues have been so stressful for her, that she has assigned the landlord duties to her son, because she can no longer deal with tenant1.

Tenants' Position

22. Tenant1 provided her copy of the rental agreement (TT#02). She said they moved in on 28-May-2021. They have a monthly lease that is from the first day of the month until the last. They pay \$800.00 a month which includes heat and light. They paid a security deposit of \$400.00 on 28-May-2021 and the landlord is still in possession of the deposit.
23. Tenant1 confirmed the service of both termination notices by email on 17-May-2022.

Notice where failure to pay rent

24. Tenant1 provided a copy of her rent payments (TT#04). She corrected that the ledger says they paid \$800.00 in May, however, she confirms that they only paid \$400.00 in May and have not paid June rent.
25. Tenant1 said that they offered to pay rent to the landlord's son and she provided the text (TT#03). She said that when they offered to pay the rent the landlord's son said that they would still have to move. Tenant1 considers the fact that they will have to move whether they pay rent or not, a refusal to accept the rent by the landlord.

Notice where tenant contravenes peaceful enjoyment and reasonable privacy

26. Tenant1 disputes everything that the landlord is stating. She also disputes what the upstairs tenants said in their witness affidavits.
27. Tenant1 said that the police haven't been there as often as the landlord has said.
28. Tenant1 also said that the first week in May she had a job interview and started working.

Analysis

Notice where failure to pay rent

29. The notice was served under Section 19, of the *Residential Tenancies Act, 2018*, which states:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

.....

(b) where the residential premises is

*(i) rented from **month to month**,*

(ii) rented for a fixed term, or

(iii) a site for a mobile home, and

*the amount of rent payable by a tenant is **overdue for 5 days or more**, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.*

.....

(4) 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.

.....

30. The tenants confirmed that they were in arrears and only paid half of May's rent. They therefore were in arrears beginning 02-May-2022 and remained in arrears until the date of the hearing. The termination notice meets the requirements of the Act and is a valid notice.

Notice where tenant contravenes peaceful enjoyment and reasonable privacy

31. Statutory condition 7.(a), set out in section 10.(1) 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:*

...

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.

....

According to Residential Tenancies Policy 7-05 Peaceful Enjoyment, interference of peaceful enjoyment is defined as: “an ongoing disturbance or activity, outside of normal everyday living, caused by the landlord or the tenant”. Peaceful enjoyment may include, but is not limited to the following: (i) excessive noise; (ii) aggressive or obnoxious behaviour; or (iii) threats and harassment.

32. I find that the tenant is interfering with the rights of the other people renting in the house, their lives are being disrupted, and their sleep is being interfered with, as well as, their children’s sleep.
33. 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.*

34. The landlord’s notice, as described in paragraph 10 and confirmed by the tenant in paragraph 23: was signed on 17-May-2022 with a termination date of 24-May-2022. The landlord served these emails on 17-May-2022 electronically to the email provided on the rental agreement (LL#02) for communication.
35. The notice meets the requirements of the *Act* and is a valid notice.

Decision

Both termination notices served to the tenant are valid.

36. The tenants shall vacate the property immediately
37. The tenants will pay to the landlords any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

Issue 3: Hearing expenses reimbursed \$20.00

38. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#07). The tenants also submitted their receipt for the \$20.00 cost of the hearing (TT#05). Pursuant to policy 12.01, as the landlord's claim was successful she is entitled to reimbursement of that cost from the tenants.

Summary of Decision


39. The tenant shall:
 - Pay the landlord \$20.00 for the cost of filing her application.
 - Vacate the property immediately
 - Pay to the landlords any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

The landlord

- Will be awarded an Order of Possession.

July 6, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office