

Residential Tenancies Tribunal

Application 2022-No.460-NL
2022-No.474-NL

Decision 22-0460-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:05 a.m. on 18-July-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
4. The landlord called a witness [REDACTED], hereinafter referred to as “the landlord’s witness.”
5. The landlord provided witness statements from [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

Preliminary Matters

6. The landlord submitted an affidavit (LL#01) stating that she served the tenant with notification of the hearing on 07-July-2022, by email; the tenant confirmed receipt of service.
7. The tenant stated that she served the landlord of notification of the hearing on 23-June-2022, by email; the landlord confirmed receipt of service.

Issues before the Tribunal

8. The landlord is seeking premises vacated.
9. The tenant is seeking validity of termination notice.

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
11. 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, Section 20: Notice where material term of agreement contravened and Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy.

Issue 1: Vacant Possession of the Rental Premises

Landlord's Position

12. The landlord submitted a rental agreement (LL#02). The tenant moved in on 01-March-2022 and they signed a six month term until 31-August-2022. The tenant pays \$1,100.00 per month which includes utilities and internet. The rental period is from the first day of each month until the last and rent is due the first day each month. The landlord said that the tenant paid a security deposit of \$600.00 on 26-February-2022 and she is still in possession of the deposit.
13. The landlord said that she served the tenant with two termination notices. The first notice (LL#03) was signed and dated for 29-March-2022 with a termination date of 08-April-2022 for rent not paid and interference with peaceful enjoyment. She said she served this to the tenant on 29-March-2022 by email at 9:02 a.m. She said that the rent was paid, however the peaceful enjoyment issues still were ongoing.
14. The tenant moved in on 01-March-2022 and on 04-March-2022 she notified the tenant for the first time about smoking marijuana in the home. She reminded her again on 14-March-2022. On 29-March-2022 she told the tenant that she was not to have anyone else living with her and that this was a material breach of her rental contract. She said she also had in person conversations with the tenant about these issues.
15. The landlord said that in the first month the tenant had her friend █ staying there and he left part way through April. At that time she nullified the original termination notice.
16. The landlord also submitted another termination notice (LL#04). This notice is signed and dated for 30-May-2022 with a termination date of 30-June-2022. The landlord said she served this by email on 30-May-2022 at 1:56 p.m.
17. She said another male appears to be living there in mid-April. Which is a material breach of the rental agreement (LL#02).

18. The landlord said that the rental agreement (LL#02) section 11 states that there is no smoking. She said that although they do go outside to smoke, she is confident that they are smoking inside the apartment. She said that this issue is ongoing and approximately twice a week you can smell marijuana in the home.
19. In relation to the peaceful enjoyment, she says that the tenant has had music up loud. She said that to the tenant's credit, that when told to lower the volume she does. She submitted into evidence their Facebook messages (LL#05) she indicates that at 10:55 p.m. on 12-March-2022 she asks her to turn down the music. She says she has to do this again on Monday 30-May-2022 at 10:25 p.m. because she has to work in the morning.
20. In addition to the noise from the music, the landlord has submitted video evidence of excessive traffic throughout the night (LL#06 June and LL#07). There is a security camera on the property which points to the driveway. There are numerous times where people are coming and going in the middle of the night. When they are coming and going throughout the night, the landlord said she can hear the door opening and closing. She states (not in evidence) that the previous Friday night there were 49 video notifications of activity throughout the night.
21. She also points out that there is a lot of activity of people coming and going throughout the day as well. The landlord said that she sometimes works from home and this is impacting her employment.
22. The landlord said that on the video footage (LL#06 & LL#07) it is clear that the male is living there. She said he is there every single day and night. The landlord said that male is also there when the tenant is not. She said you can also see, on the footage, him bringing in belongings. She said the male and the tenant argue and she has called the police and also reached out to the tenant to ensure she is safe.
23. The landlord said that the police have arrived on a number of occasions and on 16-July-2022 the police took him into custody. The landlord said she is a [REDACTED] and she believes he was being held for 72 hours.
24. The landlord submitted sworn witness statements:
 - LL#08 is an individual who works across the street with the landlord. He states that he has seen the male in question around the house and that he has had conversations with the landlord about her frustrations about marijuana being smoked inside the home.
 - LL#09 is from the landlord's supervisor who confirms the landlord has missed work due to issues in the home and that the landlord is experiencing increased stress due to the concern for her property and safety.
 - LL#10 who is a friend of the tenant who confirms that the tenant's boyfriend is there a lot and that there is a smell of marijuana smoke coming from the apartment into the landlord's space.
 - LL#11 a contractor who was in the apartment to do plumbing repair and he could smell marijuana in the home.

- LL#12 a contractor was at the apartment to do a repair of the kitchen window and he saw an ashtray, lighter and candles on the kitchen table. He said it smelled like someone was smoking there.

25. The landlord called her witness and he said he lived in the apartment last year he smoked outside and there were no issues or concerns voiced by the landlord due to his smoking outside. The landlord also confirmed that when this tenant lived there he often smoked outside and she never smelled the smoke inside her house.

Tenant's Position

26. The tenant confirms the details of her rental agreement as stated by the landlord.

27. The tenant confirms the details and service of both termination notices as stated by the landlord.

28. The tenant said that she doesn't have a person living with her. She said that the male lives with his father and does visit her frequently; she is trying to help him out. She said that the landlord has accused her of having two different males living with her since she moved in a couple of months ago. She said that she should be allowed to have guests over and that she has been told by NL housing that a person has to be at the residence in excess of 50% of the time to be considered living there.

29. The tenant denies smoking in the apartment, she said that she does smoke outside and she said that this is evident on the landlord's video evidence.

30. The tenant questions the expectation about quiet and that it should come into effect after 11:00 p.m. and not before. The times the landlord has indicated that she wanted the music turned down were before 11:00 p.m.

31. The tenant said that there could be a lot of activity on the video because she has two dogs and they have to come and go with them.

32. The tenant points out that the time stamp in the videos doesn't match the amount of daylight present.

Analysis

33. The landlord's initial notice was nullified by the landlord as she stated in paragraph 15 that after the first male appeared to move. (LL#03)

34. The second notice served to the tenant was signed and dated for 30-May-2022 with a termination date of 30-June-2022. Both parties confirm it was served on the date signed. This notice was served for cause due to breach of material term and interference with peaceful enjoyment.

35. Section 20 of the Residential Tenancies Act, 2018, states:

Notice where material term of agreement contravened

20. (2) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes a material term of a rental agreement, the landlord may give the tenant written notice of the contravention, and if the tenant fails to remedy the contravention within a reasonable time after the notice has been served, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises

36. The landlord's first notice is integral to the enforcement of the breach of material term. The landlord's first notice was not only for non-payment of rent, but also due to the smell of marijuana smoke in the house, which is a violation of section 11 of the tenant's rental agreement and also the claim that another individual is living at the apartment; another violation of the rental agreement. The landlord must give the tenant written notice of the contravention and then permit time for the tenant to correct the issue. The first notice is issued on 29-March-2022. On 30-May-2022 the second notice is given and the ongoing issues remain fundamentally the same.

37. The landlord's submission of video evidence is indisputable. I find that the tenant does have a male living at the residence. The male in question can be seen or heard on the video 81 times during the last 10 days of June. 29 of those times he is with the tenant and 52 times he is on his own and the tenant has left the property. In addition to this, on 29-June-2022, the tenant and male can be seen arguing and he leaves with baggage and belongings, then on 01-July-2022 he is returning with his baggage and belongings. The additional tenant is a violation of the rental agreement and is a breach of the material term.

38. In addition to this, the issue of marijuana smoke continues. The tenant states that they are not smoking inside the apartment. The tenant did not provide witness testimony or evidence to support either of her claims.

39. The landlord provided, in support of her claim, sworn statements and a former tenant as a witness. The testimony of the former tenant who confirms that he also smoked outside the apartment and that there was never a complaint or issue raised with him about the smell of smoke, coupled with the testimony of the landlord that she never smelled smoke from this tenant, weighs heavily in favour of the landlord's version of events. Further to this the contractor stating that the apartment smelled like people smoked there and that there was an ashtray on the table, also supports the landlord's claim. I find that the tenant or her guests are smoking in the apartment. This is also a breach of a material term in contravention of Section 11 of the rental agreement.

40. The landlord's notice is for both breach of material term and interference with reasonable privacy. The landlord has met the burden of proof and shown that the tenant has breached a material term. The notice also meets the requirement for service and time frames required by the Act. The notice is valid and the tenant should have vacated the apartment by 30-June-2022.

41. The determination of interference with reasonable privacy doesn't need to be considered, as the notice has been determined to be valid for breach of a material term.

Decision

42. The landlord's claim for vacant possession succeeds.

Issue 2: Validity of Termination Notice

43. The tenant is seeking validity of termination notice and as per paragraph 41 it has been determined that the notice is valid.

Summary of Decision

44. The landlord shall be awarded an Order of Possession

45. The tenant shall:

- move immediately
- pay to the landlord 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.

July 25, 2022

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office