

Residential Tenancies Tribunal

Applications: 2022 No. 0513 NL
2022 No. 0523 NL

Decision 22-0513-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:04AM on 08 August 2022 via teleconference.
2. The applicant, [REDACTED] as represented by [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, was represented at the hearing by his mother, [REDACTED]. An Authorized Representative Form was submitted (T#1).
4. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served of the claim against him. An affidavit of service was provided by the tenant confirming that the landlord was served of the counterclaim (T#2). Both parties confirmed that the other was served personally of the respective claims.
5. The details of the claim were presented as an originally fixed term rental agreement that is now operating month-to-month. The tenant has been residing in the rental premises since 01 December 2019 with monthly rent set at \$650.00 exclusive of utilities and a security deposit of \$487.50 collected. A copy of the written rental agreement was provided (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 an order for vacant possession.
8. The tenant is seeking validity of termination notice determined.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
10. Also relevant and considered in this case are sections 10 and 24 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

11. The rental premises is a basement suite located at [REDACTED]. The tenant lives there by himself.

Issue 1: Vacant Possession of Rented Premises Relevant Submissions

12. The landlord submitted a copy of the rental ledger and indicated that rent is paid on the tenant's behalf by AES (L#3). There are no arrears on the account. The landlord testified that she issued a custom termination notice to the tenant on 20 June 2022 under section 24 of the *Act* for "*Interference with peaceful enjoyment*" (L#4). The stated move out date was 26 June 2022. The landlord testified that this notice was served in person and proof of service by Metro Courier was provided in the abovementioned attachment.
13. The landlord testified that there were no concerns for the first two years of the tenant's occupancy at the rental premises, and that they "*never heard from him*". However, there was a marked change in 2022 and the landlord has become increasingly concerned with and afraid of the tenant. The tenant agreed that her son had lived well for two years in the rental premises, and testified that he is bi-polar.
14. The landlord identified three key reasons for why a termination notice was issued on 20 June 2022 – each of these issues was discussed during the hearing and relevant evidence was considered against each:
 - 1) The tenants of the main floor apartment found the tenant's behaviours unacceptable – the main floor apartment is currently vacant;

- 2) Vendors coming and going to the main floor of the rental premises to conduct work separate from the basement apartment occupied by the tenant, refuse to return to the rental premises to complete work so long as the tenant remains in the basement apartment;
- 3) The landlord is increasingly concerned about the safety of their staff.

Reason # 1 - Main Floor Apartment

Landlord's Position

15. The landlord testified that she could not in good conscience secure a new tenant for the main floor apartment knowing that she was potentially putting those tenants in harms way. Furthermore, the landlord testified that she is not allowed to attend showings at the rental premises on the directive of her company owner, based on concerns for fear of the landlord's personal safety. When asked if the company owner was appearing as a witness, the landlord stated that they were not.
16. The landlord testified that the previous tenants in the main floor of the rental unit were not comfortable testifying at the hearing, against the tenant. The landlord referred to a page from the court docket, showing the tenant on charges for "*Uttering threats to cause death or bodily harm*" and "*possessions of weapon for dangerous purpose*" (L#5).

Tenant's Position

17. The tenant testified that her son's peaceful enjoyment was ruined by the actions of the neighbours of the rental premises as well as the former upstairs tenant who would allegedly harass her son for his medication, particularly his sleeping pills. The tenant testified that her son is [REDACTED] and that "*he may say things, but would never harm anyone*". She testified that she has never been afraid of her son.
18. The tenant testified that her son has a mental illness, and that he has been bi-polar since he was 16. She testified that being homeless would be even worse for him than living in the rental premises. Regarding the court docket submission, the tenant testified a court appearance by itself, is not proof of guilt and that her son has not yet been found guilty.
19. The tenant testified that her son was arrested on [REDACTED] 2022 and then released back to his own rental premises.

Reason # 2 - Vendor Concerns

Landlord's Positions

20. The landlord testified that they have been attempting to complete renovation work at the main floor apartment of the rental premises since it is vacant. The

landlord referred to an undated letter that had been written by the President for [REDACTED] (e.g., the contractors hired) and read highlights including (L#6):

- Workers felt uncomfortable with the tenant and his confrontation demeanor;
 - The tenant was arrested by the RNC;
 - The tenant said “im going to stab you” to the author;
 - My company is not returning to finish work until your tenant is gone.
21. The landlord testified that the letter writer was not able to testify as a witness because he is out of the country, and reiterated that the court docket submission was evidence of the author’s experience. The landlord testified that the refusal of the contractor to return to her rental premises means that she cannot rent the main floor apartment since the bathroom renovation project is only partially complete.
22. The landlord later acknowledged that the tenant experienced a leak on 10 June 2022 in the ceiling of his bathroom and that this leak was connected to the renovation work that had been occurring in the main floor apartment. The landlord testified that she received the tenant’s call on the emergency line, and determined, that because the leak was minor and leaking only into the tenant’s bathtub below, that it could wait until Monday 13 June 2022 to fix. The landlord also later admitted that this leak was fixed by the same contracting company mentioned in paragraph 20.
23. The landlord referred to an email submitted on behalf of her process server (L#7). She read the email into the record and emphasized how the process server found the tenant to be “*Very uncooperative, combative and just unstable.....I recommend you advise the tenancy board in advance that they may want to take precaution or have security on hand as [tenant] was likely unstable and or a psychopathy exhibiting unstable and aggressive behaviour*”. The landlord testified her company uses this process server all the time and that this was the first time she ever received such feedback from him.

Tenant’s Position

24. The tenant testified that her son is bi-polar and that he had been really agitated and bothered by a leak that was caused in his ceiling on 10 June 2022. She testified that her son was anxiously trying to prevent damage from any water leaking into his apartment because he wanted to be sure that he did not give his landlord reason to evict him. The tenant also testified that she visited the rental premises on 13 June 2022 and observed the leak occurring and that it was substantial. She testified that she helped her son try and contact the 24 hour emergency line of the landlord so as to report the leak.
25. The tenant reiterated that her son is bi-polar and testified that the stress of the water leak meant that her son did not sleep the weekend of June 10-13, 2022 and that this lack of sleep worsened his symptoms of bi-polar. She testified that her son then got frustrated on the 15 June 2022 and “*lost it*”. This was when he

was arrested and charged as mentioned in paragraph 16. The tenant also testified that the weapons charge was not a result of the knife being on his person, but that it was located in the apartment.

26. The tenant testified that her son has never had any problem with people entering his unit for service, and that he understands the importance of proper maintenance. The tenant testified that she has pictures of her son's unit and that the unit is in good condition.

Reason # 3 - Staff Safety

Landlord's Position

27. The landlord testified that she does not feel safe being around the tenant. She testified that she receives multiple rambling phone calls from the tenant as part of her responsibility for answering and scheduling maintenance. The landlord testified, to the following calls as examples of what she experiences:
- That the landlord's partner was in the main floor apartment spying on the tenant;
 - That the tenant was going to smash in all of his windows;
 - That the tenant's windows were all smashed in, but when maintenance drove by there was no evidence of smashed windows;
 - That the tenant talks about there being a prostitute next door.
28. The landlord referred to a letter that had been written by her Office Manager and dated 02 August 2022 (L#8). The landlord testified that the office manager will not be called as a witness, and read this letter into the record and emphasized:
- Office staff subject to countless harassing and inappropriate calls,
 - Receive up to 5 calls a day;
 - These calls are "*haphazard*" and do not involve tenancy aspects;
 - Staff are afraid of the tenant's random and unpredictable behaviour;
 - Staff can only see calls continuing – worried of risk of physical assault.
29. The landlord testified that she does not take "*take it lightly*" to issue notices of termination and that if she could feel confident that she could work with tenant to find an appropriate arrangement, she would not have issued the notice. The landlord testified, that as shown in the various documented interactions submitted, multiple parties have reported increasingly hostile and unpredictable interactions with the tenant.

Tenant's Position

30. The tenant reiterated that her son is bi-polar and that he had been doing well for the first two years that he resided in the rental premises. She spoke at length of how a neighbouring property to the rental premises is a "*known drug house*" and spoke of how this has a negative impact on her son's behaviour. The tenant reiterated that it is better for her son to stay housed at the rental premises than it is for him to be homeless as a result of the tight rental market.

Analysis

31. 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.
32. 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.
33. As identified in paragraphs 20, 21, 22 and 23 the landlord has received documented feedback from vendors (e.g., contractors and process server) indicating that they do not feel safe returning to the rental premises due to the actions of the tenant. Additionally, the landlord testified that she too does not feel safe interacting with the tenant and referred to court docket records showing charges of weapons possessions and threats. The tenant's countered this testimony by declaring that her son may "*he may say things, but would never harm anyone*" and that he is not guilty until he is found guilty.
34. Regarding the evidence put forward by the landlord, I note the lack of sworn witness affidavits and or preparation necessary to call witnesses who experienced the alarming interactions with the tenant. Consequently, I found that the written statements submitted on behalf of the president of the Contactor (L#6), the Process Server (L#7) and the Landlord's Office Manager (L#8), were by themselves, no better than hearsay evidence as they were not supported by either sworn or verbal testimony. Taken together with the landlord's testimony however, I was struck by the consistency in how multiple parties have experienced the tenant as unpredictable and threatening.
35. In particular, I noted the testimony from the landlord that she is unable to secure new renters for the main floor apartment because she is unable to even attend at the premises at the direction of her company owner, I find that this represents continuing, unreasonable interference from the tenant on the landlord's ability to operate the entirety of their rental premises. Furthermore, I accept that the landlord cannot even have the hired contractors return to the rental premises until the tenant vacates the rental premises and that this is a significant impediment for the landlord.

36. Collectively all evidence provided by the landlord establishes on the balance of probabilities that the actions of the tenant have continuously interfered with the ability of the landlord to conduct their business of being a landlord and so their issuance of section 24 termination notice on 20 June 2022 was for a valid reason.
37. Regarding service of this termination notice, 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

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.

38. As noted in paragraph 12, the notice issued to the tenant on 20 June 2022 was a custom document and was not on the standard termination for cause document provided by this tribunal. Nonetheless, I find that this notice satisfies all requirements as set out in paragraph 36 above. Furthermore, I accept that this notice was validly served on the day it was issued as proof of service from a courier was provided.
39. In conclusion, as the notice meets all the requirements set out in this section of the *Act*, and as it was properly served, it is a valid notice. This determination answers the tenant's application for review of validity of the termination notice.

Decision

40. The termination notice issued on 20 June 2022 under section 24 of the *Act* is a valid notice.

41. The landlord's claim for an order of vacant possession of the rental premises succeeds.
42. The tenant shall 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.

Summary of Decision

43. The landlord is entitled to the following:
 - An order for vacant possession of the rented premises,
 - The tenant 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 August 2022

Date



Jaclyn Casler
Residential Tenancies Board