

Residential Tenancies Tribunal

Application 2022-0524-NL
2022-0527-NL

Decision 22-0524-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:01 a.m. on 08-August-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

Preliminary Matters

4. The landlord submitted an affidavit stating that he served the tenant with notification of today’s hearing 26-July-2022 electronically by email; the tenant confirmed service. The tenant also submitted an affidavit stating that she served the landlord with notification of today’s hearing 27-July-2022 electronically by email; the landlord confirmed service.

Issues before the Tribunal

5. The landlord is seeking vacant possession of the rental premises.
6. The tenant is seeking validity of termination notice.

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 and Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy.

Issue 1: Vacant Possession of the Rental Premises

Landlord's Position

9. The landlord submitted the rental agreement (LL#02). He said that the tenant is renting the downstairs apartment in a two apartment home. Her agreement began on 01-March-2022. It is for a monthly term. She pays \$1,075.00 a month which includes furnishings, cable and internet. He said rent is due in full on the 1st day of each month. The landlord said that the tenant paid her security deposit in installments and she had a deposit of \$750.00 paid in full on 18-March-2022.
10. The landlord said that when the tenant applied for the apartment, she said she was a single, non-smoking female, who works. He points out that she is the only name on the rental agreement (LL#02) and no other occupants are listed in part 3 of the rental agreement.
11. The landlord said that he gave the tenant a Section 24 termination notice (LL#03). It is signed and dated on 23-June-2022 with a termination date of 29-June-2022. He said he sent it electronically to the tenant on 23-June-2022.
12. The landlord said that he has had complaints from the neighbors and the upstairs tenants, but the people were fearful and didn't wish to testify. He said that the upstairs tenants said that they can't have anyone over and that they have heard the tenant's boyfriend talking about them and calling them dykes. He said that they told him they are fearful of the boyfriend.
13. The landlord said that the upstairs tenants have complained of the smell of smoke coming in upstairs, that the tenant's boyfriend is living in the apartment and there is violence and fighting. He said that the upstairs tenants are concerned about repercussions from the tenant's boyfriend.
14. The landlord provided an email (LL#04) and a list that the tenants have kept of the disturbances downstairs (LL#05). They also provided two separate videos. The first video is (LL#06) from 23-July-2022. In the video there is a male voice 0:39 screaming "get out" and then at 1:10 "this is my home." The second video (LL#08) and a male voice is screaming "I don't want to be here," and 1:10 the landlord's name and "get a f***ing van." He also provided a picture of the police car attending the apartment (LL#07) after the fighting on the second video. In both videos you can hear a male screaming and a lot of banging and thumping noises.
15. The landlord said that the neighbors have complained to him because they can hear the fighting coming from the apartment.
16. The landlord said that the upstairs tenants had inquired about purchasing the house in the past. Currently, they have given him notice on the apartment. He said one of them did get a job out of town, but prior to the issues with the downstairs tenants, he believed that the upstairs tenants were going to keep the apartment in town, as well as, the place out of town.

17. The landlord said he isn't looking for trouble and just wants the tenant to move out.

Tenant's Position

18. The tenant confirmed the details of her rental agreement, as stated by the landlord.
19. The tenant also confirms that she received the termination notice by email and provided copies of the email (TT#02) as well as the notice (TT#03).
20. The tenant said that her boyfriend doesn't live there and that he is staying there about three times a week.
21. The tenant said that initially she got along with the upstairs tenants. She said that she reported them for drinking and driving and believes that they are retaliating against them and trying to get them out.
22. The tenant is concerned about being kicked out and said that she thinks she is a good tenant.

Analysis

23. The landlord's testimony against the tenant is very weak. He states he has complaints from the neighbors and the upstairs tenants, but they don't testify. The landlord's claim that the tenant's boyfriend is living there is also without evidence and disputed by the tenant. The information provided by the upstairs tenant's is nothing more than a list of complaints it is not sworn testimony and is not held up to cross examination.
24. The only irrefutable evidence provided is the videos, in the videos the level of anger and violence that occurs when the tenant and her boyfriend are fighting can be heard. The tenant states that the boyfriend doesn't live at the apartment, however this is not relevant to whether or not the impact of their fighting, is interfering with the peaceful enjoyment of the upstairs tenants.
25. Section 10 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:

.....

2. Obligation of the Tenant - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

....

7. Peaceful Enjoyment and Reasonable Privacy -

(a) 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.

(b) The landlord shall not unreasonably interfere with the tenant's reasonable privacy and peaceful enjoyment of the residential premises, a common area or the property of which they form a part.

....

26. The tenant is responsible for her behavior as a tenant, she is also responsible for the actions of those she permits on the property. Her boyfriend may live on the property, or he may be visiting; nonetheless, his violent outbursts, are impacting not only the life of the tenant, but also negatively impacting the lives of the upstairs tenants.

27. The landlord and the tenant agreed to the service of the termination notice, the timelines follow the regulations outlined in the Act as follows:

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.

28. Based on the video evidence provided, I find that the tenant and her guest are interfering with the peaceful enjoyment of the upstairs tenant. I also find that the notice follows the guidelines of the Act and is a valid notice.

29. The termination notice is valid and the tenant should have moved on 29-June-2022.

Decision

30. The landlord's claim for an order for vacant possession succeeds.

31. The tenant shall vacate the premises immediately.

32. The tenant shall 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 2: Validity of termination notice

Tenant's Position

33. The tenant questioned the validity of the termination notice.

Decision

34. As per paragraph 29 it has been determined that the notice is valid.

Summary of Decision

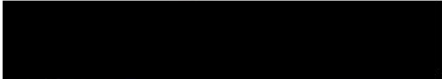
35. The landlord's claim for an order for vacant possession succeeds.

36. The tenant shall vacate the premises immediately.

37. The tenant shall 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.

August 11, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office