

Residential Tenancies Tribunal

Application 2022-No.536-NL

Decision 22-0536-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:22 a.m. on 20-July-2022.
2. The applicant, [REDACTED], represented by [REDACTED] and [REDACTED], hereinafter referred to as "landlord1 and landord2" attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1 and tenant2" did not attend.

Preliminary Matters

4. The tenants filed a primary claim 2022-No.469-NL, they did not attend the conference and their claim is dismissed.
5. The tenants were not present or represented at the hearing and I was unable to reach them by telephone at the start of the hearing. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. 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 they have been properly served. The landlords submitted an affidavit (LL#01) with their application stating that they had served the tenants with notice of the hearing, electronically to their email, on 08-July-2022. The tenants gave them the email address for communication with their application. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.

Issues before the Tribunal

6. The landlords are seeking vacant possession of the rental premises.

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 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

Relevant Submissions

9. The landlords submitted the rental agreement that they have with the tenants (LL#02). Landlord1 reviewed the details. She said that the tenants entered into a one year term agreement from 01-March-2021 until 28-February-2022. Currently, they are in a monthly agreement. She said they pay \$650.00 rent each month, their rental period is from the first day of the month until the last day, and rent is due on the 1st. She said that they paid a security deposit of \$325.00 on 15-February-2021; they are still in possession of the deposit.
10. The landlords served the tenants with a termination notice (LL#03). The notice is on a landlord's notice to terminate form. They have indicated that the termination is for cause: the first cause is breach of a material term and the second is interference with peaceful enjoyment and reasonable privacy. The notice is signed by landlord2 on 24-June-2022 and he said he delivered it personally on that date. The termination date is 04-July-2022. He said he also followed up with an email copy.
11. Landlord2 said that the tenants have a large dog, he points out that in their agreement (LL#02) Condition #4 states: "May not have animals unless written approval by landlord." He said that they have not given permission for this dog.
12. Landlord1 said there was a previous notice on 01-June-2022 for the dog, this was also hand delivered by landlord2. At that time they told them that they were in breach of their contract because they didn't have approval for this animal. They told them at that time that an eviction would follow if they didn't get rid of the dog. Since that time the landlords said that they had asked the male tenant was he going to get rid of the dog. The tenant didn't respond. They said that they would have let them stay, if they had gotten rid of the dog, but now they have to evict the tenant.
13. Landlord1 said that the tenants' dog is large and that they've received complaints from other tenants about being afraid of the dog and that the dog is often off leash. The landlords said that they have video footage of the tenants showing them walking the dog multiple times a day. (not provided)

14. Landlord1 said that they are interfering with the peaceful enjoyment with the other tenants because there is a common outside space that is to be enjoyed by everyone. The complaints that they have received says that the dog is off leash and people are afraid to go outside. The housing is mostly seniors. She said that although there has been complaints, the individuals are uncomfortable putting their names forward out of fear of reprisals.
15. Landlord1 said that they installed video cameras in the common area and on the video tape, the day before the hearing, they observed the dog lunging at someone. Landlord2 said he has been to the apartment and that the dog is quite intimidating.
16. Landlord2 said he knows it's their dog because when he has been there a couple of times, the dog was called by the owner and it comes to them and it goes into their unit. He has also seen the dog inside the unit when he has been there. Landlord1 said in April they asked them over the phone, "do you have a dog?" they admitted that they did. At that time they told them at that time they weren't allowed to have the dog.
17. The landlords submitted pictures of the damage to the grass (LL#04) from the dog.

Analysis

18. 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.

(3) Where the tenant gives a landlord notice under subsection (1) or the landlord gives a tenant notice under subsection (2) that a rental agreement is terminated, the notice shall be given

(a) not less than 7 days before the end of a rental period where the residential premises is rented from week to week; and

(b) not less than one month before the end of a rental period 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.

(4) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the person providing the notice;

(b) be given not later than the first day of a rental period;

(c) *state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and*

(d) *be served in accordance with section 35.*

19. I accept both of the landlords' testimony that the tenants have a large dog. This is clearly in contravention of the material term stating that they can't have pets, without the landlord's written permission. However, as per paragraph 10, the landlords' gave this notice on 24-June 2022 with a termination date of 04-July-2022. Section 20 states that the notice can't be given later than the first day of the rental period, therefore this would come into effect 01-July-2022 and the termination date can't be less than one month before the end of a rental period, which is 31-July-2022. This notice doesn't meet the timeframes in the Act for notice where a material term is contravened.
20. The notice also cites breach of peaceful enjoyment. 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.

(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.*

21. Statutory conditions in Section 10.7 of the *Residential Tenancies Act, 2018*, is as follows:

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 -

(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.*

22. The landlords have shown, paragraph 19, that the tenants are in a rental agreement where pets are not permitted without written permission. I accept the testimony of the landlords that the tenants' dog is large and that it is intimidating. I also accept their testimony that they have received numerous complaints from tenants who are afraid to be in the common area outside due to fear of the dog in question.
23. 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".
24. Although it is within the realm of normal to own a pet. The expectation of the property owners and other tenants, at these rental units, is that pets are only permitted with special permission. The other individuals who are renting there, are not prepared to be sharing the common area with large pets. The landlords and other tenants are within their rights to expect the tenants to respect the no pets' clause in their signed contract. I find that their refusal to follow the no pets' clause is an ongoing activity that interferes with the peaceful enjoyment of other tenants.
25. A Section 24 notice requires 5 days' notice and as shown in paragraph 10 the landlord's gave this notice on 24-June 2022 with a termination date of 04-July-2022, which meets the timelines set in the *Act*. This is a valid notice and the tenants should have moved on or before 04-July-2022.

Decision

26. The landlords' claim for an order for vacant possession succeeds.
27. The tenants' shall vacate the premises immediately.
28. The tenants' 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: Hearing expenses reimbursed \$20.00

29. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#05) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

30. The tenant shall:
 - 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.
- Reimburse the landlords' the cost of filing their application fee \$20.00.

The landlord

- Will be awarded an Order of Possession.

July 25, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office