

Residential Tenancies Tribunal

Applications: 2022 No. 0552 NL

Decision 22-0552-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 2:01 PM on 11 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”, did not participate in the hearing.
4. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served electronically of the claim against him. The landlord testified that he knew to serve electronically because this email was provided on the rental agreement and also used for communication. Proof of electronic service was provided (L#2).
5. The details of the claim were presented as a month-to-month rental agreement that started 01 June 2022. Monthly rent set at \$900.00, all inclusive, and a security deposit of \$650.00 collected on 26 April 2022. A copy of the written rental agreement was provided (L# 3).
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.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
9. 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

10. The tenant was not present or represented at the hearing and I was unable to reach them by telephone. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
11. 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.
12. As the tenant was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issue 1: Vacant Possession of Rented Premises Relevant Submissions

13. The rental premises is a 21 unit apartment building located at [REDACTED]. The tenant resides in unit [REDACTED]. The landlord testified that this is a ground floor apartment in a three floor building. He also testified that there are 6 other apartments on the ground floor, along with the shared laundry for all residents in the building.
14. The landlord testified that he issued a standard termination notice to the tenant on 18 June 2022 under section 24 of the *Act* for "*Interference with peaceful enjoyment*" (L#4). The stated move out date was 25 June 2022 and the notice was served to the door on the day it was issued.
15. The landlord testified that he issued the termination notice because he had received calls from multiple tenants in the building on 18 June 2022 regarding someone screaming in the building, and the tenant having an "episode" in the hallway outside of his ground floor apartment. The landlord referred to an example text message he received from the upstairs neighbour, who wrote (see page 1 in L#5): "...unsure of what's going on but it sounded like someone was screaming downstairs, they sounded like screams of terror".

16. The landlord also submitted a link to a private YouTube video where he had uploaded security footage from the ground floor hallway of the rental premises (L#6). The video shows a shirtless man convulsing in the hallway before he collapses to the floor and continues to move around erratically. This video shows tenants in other units coming out to investigate and attempting to render aid to the tenant who grabs at the other tenants and appears to be begging and pleading for support. The tenant then remains in the hall for two minutes before stumbling back into his apartment. This video does not have sound, but the landlord testified to the screaming that occurred. It is an alarming video to watch and time codes on the video confirm that the event occurred at 2:50pm on 18 June 2022. The landlord testified, that as shown in the video, the tenant was claiming “*people were in his unit*” but when fellow tenants went to look in his unit, there was no one there.
17. The landlord testified that he promptly attended the rental premises after the hallway event because he was contacted by multiple scared tenants in the building. The landlord testified that the tenant was “*high*” and did not recognize the landlord when he attempted to talk to him. The landlord also testified, that he decided to give the tenant a few hours to calm down and that when the landlord returned later in that same day, he found that the tenant was still “*high*” and “*speaking nonsense*”. Consequently, the landlord testified that he decided to issue a section 24 termination notice to the tenant because the tenant’s actions were “*too dangerous*” and everyone else in the building was scared. The landlord testified that he attended the rental premises on 24 June 2022 and found that the tenant was again “*high*” and “*speaking nonsense*”. The landlord also testified how the tenant was sweaty and shaking each time without any evidence of having just exercised.
18. The landlord testified that he attempted to work with the tenant and offered to return the full rent for the month of June 2022 along with the full security deposit in order to help the tenant move. The landlord referred to copies of emails with the tenant that he submitted (L#5) and read into the record, how the tenant wrote on 26 June 2022, that he had “*no memory*” of the incident and that he was trying to figure it out. The landlord also spoke of how the tenant had written that events of the 18th “*has never happened to me before ever, obviously some type of dream old hag*”. .. AND “*I had no control over the whole situation*”. The landlord testified that he found these communications very alarming, especially how the tenant claimed to have not understood WHY he acted how he did. The landlord testified, that for instance, if he knew the tenant was bi-polar and had an event, he would be willing to work with the tenant and help him get supports. But because the tenant was not forthcoming about his situation, the landlord testified that he “*has no training*” for drugs or mental health and that he needs to prioritize the safety and security of his other tenants.
19. The landlord called a witness to testify to the behaviour of the tenant. The witness, [REDACTED] testified that he has lived in the rental premises for 17 years, and that he resides in unit [REDACTED] of the rental premises with his 12 year old son. [REDACTED] testified that his building is a quiet building with lots of seniors and some well behaved students and that he normally does not hear anything from his neighbours, even the ones he shares a wall with.

20. [REDACTED] testified that he shares a wall with the tenant and that the hallway event on 18 June 2022, was actually the day the tenant moved into the rental premises. [REDACTED] testified that the tenant's event in the hallway was a drug induced hallucination and that a second event, similar to the one on 18 June 2022, occurred a week or so after. [REDACTED] testified that he has been collecting assorted drug paraphernalia from the hallway, outside of the tenant's door since 18 June 2022, including a glass pipe and multiple needles. [REDACTED] also testified that he has been observing multiple individuals coming and going from the tenant's apartment between the hours of midnight and 5 am on a daily basis since the tenant moved in.
21. The landlord referred to emails with the tenant, where the tenant wrote that he would vacate the rental premises on 27 June 2022 which the landlord allowed (see page 2 on L#5). However, the tenant has not yet vacated the rental premises and the landlord testified that the tenant has not paid rent for August 2022. The landlord also testified that he saw the tenant at the rental premises on 10 August 2022.

Analysis

22. 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.
23. 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.
24. As identified in paragraph 19, the tenant's very public hallway event, a probable drug hallucination was said to have occurred on the first day he moved into the rental premises. Video evidence was provided of this hallway event, and the footage was alarming. The landlord testified that multiple tenants reported the event and have reported feeling unsafe ever since. The tenant's neighbour appeared as witness during the hearing, and testified how, never in his 17 years of residing in the rental premises has he experienced such interference from a neighbour. The witness described two hallway events, regular drug paraphernalia being left outside of his apartment and regular nightly visitors to the tenant's apartment.

25. Taken together, the testimony from the witness and the landlord, along with video evidence of the hallway event and email correspondence with the tenant, establish without a doubt, the actions of the tenant have presented an unreasonable and continuing interference with the ability of other tenants in the rental premises to safely and peacefully enjoy occupancy in their respectful units. The fact that the major event reported on 18 June 2022 occurred on the tenant's supposed first day in the rental premises was alarming. I accept testimony from the landlord that he attempted to work with the tenant and returned later on that same day to meet again with tenant before he decided to issue the section 24 termination notice. As such, I find that the notice was issued for a valid reason.
26. 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.

27. As noted in paragraph 14, the notice issued to the tenant on 18 June 2022 was a standard termination for cause document provided by this tribunal. As such, I find that the notice contained all required information and was validly served.
28. 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

29. The landlord's claim for an order of vacant possession of the rental premises succeeds.

30. 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

31. 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.

15 August 2022

Date


Jaclyn Casler
Residential Tenancies Board