

Residential Tenancies Tribunal

Application 2022-No.610-NL

Decision 22-0610-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:03 a.m. on 31-August-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “landlord1 and landlord2” attended by teleconference

Preliminary Matters

4. The tenant provided an affidavit stating he had served the landlords with notification of the hearing on 20-July-2022 electronically. Landlord1 stated that she had been notified as stated, however, landlord2 wasn’t given notification. Landlord2 confirms that he wasn’t provided notice, however, he agrees to waive his right to notice.

Issues before the Tribunal

5. The tenant is seeking: Validity of termination notice.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. 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, Section 22: Notice where tenant’s obligation not met, Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy, and Section 34: Requirements for notices.

Issue 1: Validity of termination notice

Tenant's Position

8. The tenant stated that he rents a room in an upstairs floor of a house. The unit is rented by himself, the landlord's daughter and another person. The tenant said he moved in on 01-February-2022 and moved out 20-July-2022. He said he was in a monthly agreement with the landlords and paid \$550.00 each month; utilities are included in the cost of his rental. He said he paid a security deposit of \$275.00 on 22-January-2022, the landlords are still in possession of the deposit.
9. The tenant provided a termination notice (TT#02) the notice is dated and signed by both landlords on 01-July-2022 with a termination date of 31-July-2022 and was delivered in person on the day signed. The reasons for termination are: 1. Breach of material term, 2. Failure to keep the premises clean and repair damage and 3. Interference with peaceful enjoyment and reasonable privacy.
10. The tenant disputes the landlords' claims, he said that their daughter lives in the house and that the daughter has made up all of the claims to get him out. He said that she told him she didn't like him and that she was going to get him out. He said twice she packed up his belongings.
11. The tenant disputes that the other tenants moved because of him. He said that the first person moved for work. He provided a text thread between him and the second tenant, (TT#03) where he directly asks if he moved because of him and the second tenant said that he didn't. The third tenant is still living there.
12. The tenant said that the landlord's daughter would do up a list of weekly chores and that he would do his share on the weekend. He also said that he did do the day to day cleaning where you cleaned up behind yourself.
13. The tenant said that he video records in his bedroom and he does this constantly. He said he also records from a ledge outside of his room.
14. He provided a video (TT#07) and he said that the reason for the video is that on the 15th of July he and his mother were there to pack up some of his belongings and that while they were there the daughter called the police. He had received a text (TT#02) telling him he has 5 days' notice to get out. When the police arrived they stayed while he collected his belongings. He said he went back that night and stayed, 5 days later on the 20th of July, the locks were changed.
15. The tenant said he is a recovering alcoholic and that they are using this against him.

Landlord's Position

16. Landlord1 confirms the details of the rental agreement. She said that the 3rd bedroom has had three different people renting there since the tenant moved in. They said the first person moved because of finding a new job. The second person left to get their finances in order, however, they believe he left because of the ongoing issues with the tenant. There is another person living there now and landlord1 said that person is still living there.
17. Landlord1 said that the unit is non-smoking but she is under the impression that the tenant was smoking crack, as well as, regular cigarettes and the smoke was blowing in through the window. She said that the smell gets in the walls.
18. Landlord1 said that she has a lot of concern about the illegal drug use. She said that the tenant submitted a video of him tantalizing their daughter and saying "your mother's not going to believe you." (This video is not included in the evidence)
19. Landlord1 said that her daughter was afraid for her safety and she spent a month away from the house and only returned when she knew he was not there. Her daughter said that when he was doing drugs the tenant would become childlike and belligerent.
20. Landlord1 said that her daughter was talking to the second tenant and that he had paid the rent, but still moved and that he hadn't moved into another place but was staying with his mother. She said that this shows that he moved because of what was going on in the apartment. It clearly wasn't financial.
21. Landlord1 said that reason 2 is failure to keep premises clean and repair damages. She said that the tenant wasn't meeting his responsibilities with keeping the common areas clean. She said that her daughter would provide a list of areas clean and that when she would come home there would be areas not cleaned and dishes not washed. She said that her daughter would say, when she confronted the tenant about doing the work, he would agree to do it if she gave him a beer. Landlord1 said her daughter said he would drink her beer when she was at work. She said that there is no complaint of damages.
22. The last issue is interference with peaceful enjoyment and reasonable privacy. She said that this is the main reason for her application. She said that the tenant was videotaping the other tenant's personal conversations and interfering with their privacy. She said he struggles with addictions and this is impacting the other tenants.
23. Landlord2 said that the other tenants don't feel safe. He said that the tenant also goes through their mail.
24. Landlord2 said that they sent the tenant a text on 15-July-2022 (TT#02) telling him that he is to be out on 20-July-2022. He said that the recording of tenants, following the others and videotaping as well as the ongoing issues with the tenant, they sent him this new notice.

Analysis

25. 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.

26. Landlord1 accuses the tenant of smoking crack and regular smoke, she said that the smoke comes in through the windows. Landlord1 says that the rental agreement states no smoking. According to landlord1's own statement the tenant is smoking outside and the wind blows the smoke inside. The intent of a non-smoking clause is to ensure that tenants don't smoke inside the rental unit. The tenant is smoking outside and therefore I find that the tenant is not in violation of that clause of his contract.

27. Section 22 of the *Residential Tenancies Act, 2018* states:

Notice where tenant's obligation not met

22. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 2 set out in subsection 10(1), **the landlord may give the tenant notice requiring the tenant to comply with the condition.**

(2) Where a tenant contravenes statutory condition 2 set out in subsection 10(1) within 3 days after the notice under subsection (1) has been served or within a reasonable time, 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.

(3) 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.

And Section 10 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.

28. As shown above, in the event the tenant is not complying with statutory conditions to keep the premises clean the landlord should give the tenant notice requiring the tenant to comply with the condition in a timely manner. The landlord in this case did not give the tenant notice and require the tenant to comply, further to this, it is not the intent of this clause to dictate that one tenant shall enforce a cleaning schedule upon another. The tenant said he completed the weekly chores assigned to him and also cleaned up behind himself throughout the week. The landlord did not provide any proof to the contrary. The landlord has not proven that the tenant is in violation of this clause and I find that he is not in violation of this clause.
29. Lastly, the landlord's claim for interference with peaceful enjoyment and reasonable privacy. The landlord has listed this issue on the first notice dated July 01, 2022 with a termination date of 31-July-2022 and this is also the reason given on the termination notice given by text on 15-July-2022 with a termination date of 20-July-2022.
30. The landlords have claimed that the tenant has interfered with the peaceful and enjoyment and reasonable privacy of the other tenants and have caused one of the tenants to move. The issues are around the ongoing battle between the landlords' daughter and the tenant. The landlords did not provide any evidence of these issues. They didn't provide witnesses or texts to support their claims. The testimony given by both landlords is hearsay evidence, which they have received from their daughter, who also lives in the house. This is a he said she said situation and without any proof is impossible to determine fault.
31. The landlords claimed that the tenant is recording the other tenants in the home and the tenant did acknowledge that he does this "all the time." The tenant said he does this from the privacy of his room, and he also acknowledges doing this from the ledge outside his room while taping the common areas of the home.
32. Statutory condition 7.(a), set out in section 10.(1) 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:

....

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.*

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". Peaceful enjoyment may include, but is not limited to the following: (i) excessive noise; (ii) aggressive or obnoxious behaviour; or (iii) threats and harassment.

33. The tenant's admission that he is taping the other tenants in the house "all the time," is a clear interference with their peaceful enjoyment and reasonable privacy. No one should be under video surveillance in their own home without their knowledge or consent. I therefore find that, the tenant is interfering with the peaceful enjoyment and reasonable privacy of the other tenants in the home.
34. The landlords notice for 20-July-2022, is not a valid notice. Section 34 of the Residential Tenancies Act, 2018, states:

Requirements for notices

34. A notice under this Act shall

- (a) be in writing in the form prescribed by the minister;*
- (b) contain the name and address of the recipient;*
- (c) identify the residential premises for which the notice is given; and*
- (d) state the section of this Act under which the notice is given.*


35. The text notice doesn't follow the above requirements: it doesn't identify the name and address or state the section of the Act. Further to this, the notice doesn't give adequate time, when serving a notice, the day the notice is served and the day it takes effect is not part of the 5 days.
36. The initial notice served on 01-July-2022, however, does meet the requirements of the Act, and is a valid notice. The tenant therefore should have moved on or before 31-July-2022.

Summary of Decision

37. The notice served to the tenant on 01-July-2022 with a termination date of 31-July-2022 is a valid notice and the tenant should have moved on or before that date.

September 6, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office