

Residential Tenancies Tribunal

Applications: 2022 No. 0628 NL
2022 No. 0699-NL

Decision 22-0628-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:06AM on 08 September 2022 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED] and hereinafter referred to as "the landlord", participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing. His mother, [REDACTED], also participated in the hearing on the tenant's behalf.
4. The landlord testified that the tenant was served personally on 17 August 2022 with notice of the hearing and the tenant confirmed this service. The tenant's mother testified that the landlord was served notice of the tenant's claim on 29 August 2022 by email. The landlord testified that he did not receive this service. I proceeded with the hearing in absence of affidavits because both parties were in attendance and both parties were seeking the same thing – validity of the termination notice issued.
5. The details of the claim were presented as rental agreement that has been continuing since fall of 2021, neither party was certain of when it started. Monthly rent is set at \$750.00, exclusive of utilities, and fully paid for on the tenant's behalf by government. The landlord confirmed that a security deposit was collected, which the tenant's mom testified she had paid on the tenant's behalf. Neither party was certain of the exact value of the security deposit collected.
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 tenant is seeking validity of the termination notice determined.

8. The landlord is seeking vacant possession of the rental premises.

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*.

Preliminary Matters

11. The tenant requested “a few days” to submit proof of text messages regarding his tenancy in the rental premises. His mother testified that these messages were on her phone but did not explain their relevance to the termination notice issued on 21 July 2022. As such, I did not accommodate this request. Likewise, the landlord testified that he submitted letters written in support of the termination from neighbours of the tenant but that he did not provide these letters to the tenant for review prior to the hearing. As such, I did not consider these letters as evidence during the hearing.

Issue 1: Vacant Possession of Rented Premises

Landlord’s Position

12. The landlord testified that the rental premises located at [REDACTED] is a 14 unit, two level apartment building and that the tenant occupies unit [REDACTED]. The landlord testified that each unit in the rental premises has its own exterior access door and in unit laundry hookups. The landlord testified that there are a mix of one and two bedroom units in the rental premises, and that these units are occupied by a mix of individuals, some independently and some as couples.
13. The landlord testified that he is seeking vacant possession of the rental premises because he had previously issued a termination notice to the tenant in response to repeated disturbances caused as a result of the tenant bringing a woman to the rental premises. The landlord testified that he agreed to cancel the previous termination notice so long as the tenant agreed to no longer allow the woman on the rental premises. However, the landlord received notice of a significant disturbance at the rental premises between the tenant and this woman and so he issued a section 24 termination notice (L#1). This notice was issued on 21 July 2022 and posted to the door by the building superintendent on the day it was issued. This notice identified a move out date of 27 July 2022.
14. The landlord testified that he had no issues with the tenant himself, and that when the tenant is in the rental unit by himself, you do not hear him. The landlord testified that he wishes to pursue vacant possession of the rental premises because, if he were to discontinue the claim today, he would just have to come back again in a few months after the tenant caused additional disturbances as a result of allowing the woman on the rental premises.

15. The landlord called the building superintendent, [REDACTED], as a witness. The landlord testified that he owns two apartment buildings back to back, and that the building superintendent lives in the other apartment building. [REDACTED] testified that he has been the building superintendent for 4 years and confirmed that he served the 21 July 2022 termination notice by posting it to the tenant's door on the day that it was issued. [REDACTED] testified that he has received numerous phone calls from other tenants regarding the conduct of the tenant and this woman when they are both in attendance in the rental unit. He testified that they argue and scream at each other, that they are always fighting, and that the fighting "*sounds like murder*" which causes concern and worry for other tenants in the building since this fighting and arguing mostly happens between 9PM and 1AM. [REDACTED] further testified that if and when he has attempted to knock on the tenant's door in response to these issues, that the tenant never answers.
16. Regarding the tenant's conduct since the 21 July 2022 termination notice was issued, [REDACTED] testified that there have been ongoing issues and reports of noise from the tenant's rental unit. [REDACTED] also testified that the woman was most recently seen leaving the tenant's rental unit at 5am "the weekend before last".
17. Regarding the woman who is the cause of the interference complaints when she attends the tenant's rental, [REDACTED] confirmed that the woman previously resided in her own unit within the same rental premises. He testified that she vacated the rental premises shortly after the tenant took up occupancy, and that she vacated "because of the tenant".

Tenant's Position

18. The tenant testified that he does not work and that he is trying to find work. The tenant's mom testified that he has been at her place since July and is only infrequently in attendance at the rental premises. The tenant testified that the woman is no longer his girlfriend and that they have known each other for 8 or 9 years. The tenant testified that they would argue about previous stuff and about work.
19. The tenant's mom denied that the tenant was provided with the 21 July 2022 termination notice on the day it was issued. The tenant's mom testified that he only became aware of the termination notice when they were contacted by the building superintendent informing them that the tenant's rent unit was "rented for 01 August". The tenant confirmed that he retains possession of the rental unit and testified that he has not seen the woman since the July incident that resulted in the termination notice. The tenant's mom testified that the July incident occurred in the day time and that she applied for dispute resolution and determination of validity of the termination notice, on the tenant's behalf.

Analysis

20. 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.

21. 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.
22. As identified in paragraph 13, the tenant was issued with a section 24 termination notice as a result of a woman who he continued to allow at the rental premises. Witness testimony was received from the Building Superintendent. [REDACTED], who reported that the tenant and this woman fight in a way that "sounds like murder". Repeated fighting in such a way, is an unreasonable disturbance that interferes with the peaceful enjoyment of other tenants, particularly when the "murder like" disturbances happen late at night as reported by Building Superintendent in paragraph 15. Where the landlord testified that he issued a previous termination notice to the tenant, for the same reason, that he later rescinded so long as the tenant promised to no longer allow this woman on the rental premises, that the tenant continued to allow the woman on the rental premises and caused subsequent disturbances, is convincing justification for issuance of the 21 July 2022 termination notice. As such, I find that this termination was issued for a valid reason.
23. 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.**
24. 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

Summary of Decision

25. 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.

08 September 2022

Date

Jaclyn Casler
Residential Tenancies Board