

## Residential Tenancies Tribunal

Applications 2022 No. 0740 NL  
2022 No. 0841 NL

Decision 22-0740-00

Jaclyn Casler  
Adjudicator

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### Introduction

1. The hearing was called at 9:06 AM on 11 October 2022 via teleconference.
2. The applicant [REDACTED], hereinafter referred to as "the landlord" participated in the hearing. The other applicant, [REDACTED], did not participate in the hearing. The landlord indicated that [REDACTED] is her father and the co-owner of the rental premises.
3. The respondent [REDACTED], hereinafter referred to as "the tenant" participated in the hearing. The tenant and landlord agreed that the other named tenant, [REDACTED], no longer resides in the rental premises.
4. The landlord and tenant agreed to proceed with the hearing despite neither party providing an affidavit of service.
5. The details of the claim were presented as a long standing rental agreement operating for at least six years, when the rental premises was previously owned by the landlord's grandfather. Monthly rent is set at \$900.00 and a security deposit in the amount of \$450.00 was 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. In these proceedings the standard of proof 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 of vacant possession.
8. The tenant is seeking validity of the termination notice.

## 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 is section 24 of the *Act*.

## Preliminary Matters

11. The rental premises is a single family dwelling with two apartments located at [REDACTED] [REDACTED]. The tenant resides in the main floor unit. The landlord also owns and operates the neighbouring [REDACTED] as rental premises.

### Issue 1: Vacant Possession Validity of Notice

#### Landlord's Position

12. The landlord testified that she issued the termination notice dated 26 August 2022 on that date, and that it was issued by being taped to the tenant's rental premises. The landlord provided proof of the notice issued (L#2) as well as a picture of it taped to the premises (L#2). The notice is a standard notice template for termination under section 24 of the *Act*, and it identified a move out date of 01 September 2022. The landlord testified that her first interaction with the tenant was when she assisted with paperwork that was required by the tenant when she first took occupancy in the rental premises (e.g., 6 years prior).
13. The landlord testified that she issued the notice because another tenant of hers, the mother of a disabled man who resides in the adjacent basement suite [REDACTED] [REDACTED], contacted her in responses to a series of threatening voice mail messages that had been left by the tenant on her son's phone. A copy of three voice mail messages was submitted (L#3) and played during the hearing and the following highlights were noted:

*"You little bitch...you get the fuck over here"*

*"Don't enter my driveway, you put your fucking car over there...I'll beat every fucking window out of it"*

*"You (indiscernible) bitch....you march your legs up my stairs, or when I see your car over there, I am going over to your house. Ok. This is your last thing you'll hear from me. But you might, you will hear from someone else if I don't call you back. And you'll be sorry once you do."*

14. The landlord testified that she believed these messages were caused by two things: 1) the neighbour's son parking behind the tenant's rental premises (as permitted by the landlord) and 2) the neighbour's son calling the tenant's son late at night one day because he was worried about the tenant, as her car was not in the driveway. The landlord testified that she issued the notice because her tenants in the basement suite of [REDACTED], stated that they were afraid of the tenant and were considering moving as a result. She also testified to how there have been multiple reports made over the years to her, from tenants concerned with the named tenant's behaviour.
15. Regarding the exact timeline of events on 26 August 2022, the landlord testified that she was contacted by the mother who resides in the basement suite of [REDACTED] [REDACTED], who then played the voice mail messages left by the tenant. The landlord testified that she then called the tenant to inform her that she would be attending the tenant's rental premises later that day to issue her a termination notice because the tenant was "*clearly trying to instill fear*". The landlord testified that the tenant then appeared at her own personal residences and that this caused alarm for her six year old son because the tenant would not then leave and that she had to call the police as a result. The landlord testified that she then attended to the tenant's rental premises later that day and served the notice by taping it on the tenant's door and that she also called through an open window, to notify the tenant that a notice "*had been issued*".
16. The landlord testified that she is trying her best to follow the legislation and be as fair as possible with the tenant because she recognizes that the rental market is expensive and that the tenant is a single, senior female. The landlord denied ever threatening the tenant with eviction by police.

#### Tenant's Position

17. The tenant acknowledged that she left the voice mail messages referenced in paragraph 13 and that she would "*take the consequences for doing so*". The tenant testified that she left the messages because the neighbour's son called her own son repeatedly late at night, and that this was bothersome for her own son. The tenant testified prior to moving out, her son was friends with the neighbour's son and that the three of them were "*friendly*". The tenant then contradicted herself when she denied negative relations with her neighbours, but then proceeded to speak negatively of her fellow tenants (neighbours), including the mother in the basement suite of [REDACTED].

18. Regarding the termination notice that was served to her, the tenant initially denied receiving a termination notice. However, she then testified that she had to scrape the notice off of her window with a butter knife. The tenant also initially testified that she did not know the landlord, but then spoke later to say that she has known the landlord's son for many years and that there was no way she could have scared him when she attended to the landlord's personal residence. The tenant testified that she attended to the landlord's personal residences in an effort to "talk things out" and that she left as soon as the landlord told her to leave. The tenant also testified that the landlord threatened the tenant by saying that she would "get the police after her", if she did not move out.
19. The tenant concluded her testimony by stating that she was "*sorry all this happened*" and that she knows she needs to find a new place to live. She testified that she has been trying to find a new place to live, but that the monthly rent of these places will take all of her pension, leaving her with no money for food.

## 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 paragraphs 13, 14, and 15, the landlord issued the termination notice because the tenant had left a series of threatening voice mail messages on the phone belonging to the disabled son of the neighbouring tenants. The landlord testified further, that she has had reports for years from other tenants, concerned with this tenant's behaviour, but that nothing was done until it became clear that, the tenant was now "*clearly trying to instil fear*" as shown in the voice mail messages. As shown in paragraph 13, I agree that the messages were meant to cause fear, and I accept the landlord's testimony that these messages caused her neighbouring tenants to consider vacating their own rental premises as a result. Because the tenant then fully acknowledged leaving these messages, I find this demonstrates aggressive and obnoxious behaviour which constitutes

interference with peaceful enjoyment with other tenants, as identified in Residential Tenancies Policy 07-005 and is a valid reason for issuing such a termination notice.

23. I further acknowledge that the tenant attending to the landlord's rental premises after being verbally informed that a termination notice would be being issued, could also be considered aggressive behaviour and interference with the landlord's right to peacefully operate a rental premises, especially since the landlord testified that "she did not know the landlord" a fact that the landlord disputed in paragraph 12.
24. 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.*
25. 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

**Decision**

26. The termination notice issued on 26 August 2022 is a valid notice.
27. 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.

13 October 2022

Date

Jaclyn Casler  
Residential Tenancies Tribunal