

Residential Tenancies Tribunal

Applications: 2022 No. 0803 NL

Decision 22-0803-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:16 AM on 03 November 2022 via teleconference.
2. The applicant [REDACTED], hereinafter referred to as "the landlord" participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the tenant" did not participate in the hearing.
3. The landlord submitted an affidavit of service declaring that he served the tenant in person on 07 October 2022 (L#1).
4. The details of the claim were presented as a long standing month-to-month rental agreement that started more than 10 years ago. The monthly rate of rent is \$550.00 and a security deposit was collected in the amount of \$275.00.
5. 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

6. The landlord is seeking an order for 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* (the *Act*).
8. 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

9. The tenant was not present or represented at the hearing and I was unable to reach him by telephone because the landlord testified that he has no personal phone number. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
10. 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 been properly served.
11. As the tenant was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.
12. The landlord testified that the rental premises is in an adjoining █ unit apartment building located on a corner lot in █. The tenant resides in the bottom floor 2 bedroom unit located at █.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

13. The landlord testified that the tenant was ok until COVID and then his personal health appeared to change. The landlord testified that he conducts regular inspections in each of his rental premises and that he and his wife previously had a positive relationship with the tenant. The landlord testified that the tenant is now always agitated and angry when interacting with the landlord and his wife. The landlord also testified there were a series of events in August 2022 that led to him issuing the section 24 termination notice to the tenant in person on 01 September 2022 (L#2). The notice is a standard template notice available from this Tribunal, and the landlord testified that he was generous and gave the tenant until 30 September 2022 (the stated date on the notice) to move out.
14. The first event in August 2022 was when the windows in the tenant's unit were smashed out, as well as the windows in the adjoining unit that is also owned by

the landlord. The landlord testified that he fixed the windows only to have them smashed out again 3 days later. The landlord testified that he has incurred approximately \$1,700.00 in costs to repair these windows and that the windows were smashed as retaliation for drugs being sold by the tenant. The landlord testified that he gave the tenant a verbal warning after the windows were smashed the first time, telling him that he has “*1 kick at the can*”.

15. The second event was 10 days later when the landlord received an emergency call from the mother of the Afghan family renting the 3 bedroom unit above the tenant. She urgently requested that the landlord attend to the premises because the tenant was fist-fighting in the street with two other men with baseball bats, visual proof of which was shared with him when he attended the premises. The landlord testified that the [REDACTED] family then gave notice to vacate and he lost them as tenants effective 30 September 2022. He testified that they had been paying \$2000.00 in rent and that he only recently secured replacement tenants, a [REDACTED] family.
16. The third event was when landlord's wife, [REDACTED], attended to the tenant's unit to speak with him and she was verbally abused. [REDACTED] appeared as a witness and she testified that she and her husband would always help the tenant out. She testified that the tenant was manic in his presentation and told her to go away because she was “*just the landlord*”. She testified that this experience made her “feel small” when she was trying to be a friendly face and help make sense of the situation.
17. The landlord summarized his testimony by stating that he “*literally cannot afford*” to keep the tenant in his rental premises, that the bills are stacking up, and that he wants the tenant gone so that he can have a drug free premises where people can feel safe. The landlord testified that he is physically and mentally tired with the situation, and that he just wants the tenant gone. When asked how he knows the tenant is selling drugs from the premises, the landlord testified that this is evident based on the people he has observed attending to the tenant's rental unit.

Analysis

18. 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.
19. 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.

20. In addition to the above, a termination notice issued under section 24 of the Act must satisfy section 34 of the Act, which reads as follows:

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.*

21. Regarding the notice and how it was served, I find that the notice contains all required information and was properly served to the tenant. Regarding reasons for serving the tenant a section 24 termination notice, I found that the landlord successfully established on the balance of probabilities that he was justified in doing so because:

- He lost well-paying tenants who cited the tenant as their reason for vacating;
- He incurred repeated costs for damage to the rental premises that he directly attributed to the tenant and the tenant's actions (suspected drug selling);
- His wife testified to negative interactions with the tenant even though she was trying to support the tenant.

22. In conclusion, I find that the section 24 notice issued on 01 September 2022 is a valid notice because the landlord successfully established on the balance of the probabilities that the tenant represents an ongoing unreasonable disturbance, outside of normal everyday living that has continued to impact the landlord's ability to safely and cost effectively operate his rental premises.

Summary of Decision

23. The landlord is entitled to the following:

- An order for vacant possession of the rented premises.
- The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

04 November 2022

Date


Jaclyn Casler
Residential Tenancies Tribunal