

## Residential Tenancies Tribunal

Applications: 2022 No. 0811 NL

Decision 22-0811-00

Jaclyn Casler  
Adjudicator

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### Introduction

1. The hearing was called at 9:04 AM on 28 October 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as the "landlord" did not participate in the hearing and was represented by [REDACTED], who is hereinafter referred to as "the property manager".
4. An affidavit of service was not provided however the property manager confirmed receipt of service.
5. The details of the claim were presented as a fixed term agreement that started on 01 December 2021. Monthly rent is set at \$900.00 all inclusive, and a security deposit in the amount of \$675.00 was collected. The rental agreement is written but a copy was not submitted.
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 termination notice determined.

## **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*.

## **Preliminary Matters**

10. The rental premises is a three storey, two apartment dwelling located at [REDACTED] [REDACTED]. The tenant resides in the lower level apartment, unit A. There is a unit upstairs unit that was occupied by the landlord until July 2022, and has since been utilized as a short term rental while also sitting empty at times.

### **Issue 1: Validity of Termination Notice**

#### Tenant's Position

11. The tenant testified that he was initially contacted by the landlord via Facebook and told that he was being evicted because he made the rental premises "uninhabitable". The tenant denied making the premises uninhabitable and testified that there have been "AirBnB's" coming and going ever since, without any problem. The tenant testified that he was then issued a paper termination notice (T#1) on 06 September 2022 by the property manager. The tenant testified that he was issued this notice because the landlord had told him that his marijuana smoke caused a prospective tenant to not rent the upstairs unit. The tenant disputed this reasoning.
12. The tenant testified that he is a casual smoker of marijuana and the landlord has known this since shortly after he moved into his rental unit. The tenant also testified that the landlord has permitted him to smoke on the side of the house, and even offered the garage for smoking, when needed in bad weather. The tenant testified that he has never smoked marijuana inside the rental premises and that he no longer smokes on the property as a result of the notice.
13. The tenant raised a concern regarding his own unit at the rental premises and how AirBnB clients using the upstairs unit often access his rental unit without permission. The tenant testified that it is "crazy" how his own privacy is not respected.

#### Landlord's Position

14. The property manager testified that she issued the termination notice in person on 06 September 2022. The notice was issued under section 24 of the *Act* and it identified a stated move out date of 16 September 2022. The property manager

testified that the notice was issued because the smell of marijuana smoke on the rental premises caused a prospective tenant to not move into the main floor unit on 01 September 2022.

15. The property manager also testified that she noticed the smell of marijuana smoke when she attended to the rental premises “several times” in August 2022 and that she could specifically smell it while inside. The property manager testified that she knew the smoke smell came from the tenant because he was the only person occupying the premises at those times. She spoke of the difficulty of providing evidence of smoking, and offered to submit evidence of related text messages sent between the landlord and the tenant.
16. The property manager acknowledged that the tenant has stopped smoking on the premises since the notice was issued, and testified that she is still looking to enforce the termination notice because the landlord is worried the tenant will start smoking on the premises again in winter. The property manager also spoke of how the landlord had mentioned there were different occasions where she was said to have communicated her own concerns to the tenant regarding the marijuana smoke. The property manager testified that the landlord previously issued a separate termination notice to the tenant, but did not enforce it because they “worked things out”.
17. Regarding the tenant’s concerns with AirBnB guests accessing his unit, the property manager testified that a new door has been installed between the two units and that this door locks from both sides. The property manager stated that she has never entered the tenant’s own rental unit and that the tenant can contact her with concerns.

## 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. As identified in paragraph 15, the property manager stated that it was difficult to provide evidence related to smoking. Nonetheless, the property manager as the landlord's representative, has the burden of proof for establishing validity of termination notices issued.
21. Regarding this specific dispute and the termination notice issued on 06 September 2022, I find that the property manager failed to establish on the balance of probabilities that the tenant's marijuana smoke represented an unreasonable interference. My supporting reasons are as follows:
  - The tenant has consumed marijuana on the rental premises since shortly after taking possession of his unit in December 2021. He was issued the termination notice in September 2022, more than nine months later.
  - The landlord did not participate in the hearing, either verbally, or through a sworn statement. This lack of participation is of note because the property manager and the tenant in this dispute relayed different guidance said to be received in the landlord's name. Where the property manager testified that the landlord wants vacant possession of the tenants unit due to his smoking, the tenant testified that the landlord allowed him to smoke on the side of the rental premises and even offered him her garage for smoking.
  - The property manager testified that the tenant was issued the termination notice because a prospective tenant did not take occupancy of the rental premises on 01 September 2022. This is a one-off event. I was not provided with verifiable evidence that the tenant's smoking represented an ongoing unreasonable disturbance or activity as is required for termination notices issued under section 24 of the Act.
  - Lastly, the property manager acknowledged that the tenant appears to be responsive to feedback. He has even stopped smoking marijuana on the rental premises. As such, I find that the tenant's actions do not in any way reflect for instance, aggressive or obnoxious behaviour, either or which is required for proof of issuing a valid termination notice.
22. Consequently, I find that the termination notice issued on 06 September 2022 does not meet all requirements as set out in the Act, and is therefore not valid.

## **Decision**

23. The termination notice issued on 06 September 2022 is not a valid notice.

28 October 2022

Date

Jaclyn Casler  
Residential Tenancies Tribunal