

Residential Tenancies Tribunal

Applications: 2022 No. 0823 NL
2022 No. 0845 NL

Decision 22-0823-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:03 AM on 31 October 2022 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereafter referred to as “tenant1” and “tenant2” participated in the hearing. As did [REDACTED], hereinafter referred to as the “the landlord”.
3. [REDACTED], hereinafter referred to as “the caseworker” attended the hearing in support of the tenants.
4. An affidavit of service was provided by the tenants (T#1) and the landlord (L#1) confirming that the other party was served personally of the respective claims. The landlord testified that the tenants were provided all evidence and tenant1 confirmed service of evidence.
5. The details of the claim were presented as a long standing month-to-month agreement operating since 2015. Monthly rent is set at \$800.00, POU and a security deposit in the amount of \$400.00 was transferred to the landlord when he purchased the premises in March 2018. A copy of a 2018 written rental agreement was 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 tenants are seeking validity of termination notice determined.
8. The landlord is seeking an order for 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* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

11. The rental premises is a two apartment dwelling located at [REDACTED] [REDACTED]. The tenants reside in the lower level two bedroom unit, Unit A. The tenants access their unit from a side entrance door. The main floor unit is occupied by tenants who have resided in the premises for approximately 5 years. They were secured by the landlord after he purchased the premises in March 2018.

Issue 1: Validity of Termination Notice Determined Vacant Possession of Rented Premises

Tenants' Position

12. Tenant1 acknowledged receiving three verbal warnings from the landlord regarding complaints from the main floor tenants. However tenant1 denied causing noise or disturbance within the rental premises, and testified that his mother and his aunt are in their 60s and only produce "pillow talk". Tenant1 also testified that if there was noise, he would cause it to stop. Tenant1 acknowledged that his aunt has been residing with himself and his mother in the rental premises, and testified that he asked his aunt to leave after receiving the continued verbal warnings from the landlord. Tenant1 testified that he is currently living in the rental premises with his mother and his aunt.
13. Tenant1 denied the complaints about smoking in the rental premises. He acknowledged the video evidence submitted to this Tribunal, and testified that smoking may occur in the doorway to the rental premises, but only on bad weather days. Tenant1 also acknowledged that the landlord submitted audio recorded evidence of a phone conversation he had with the landlord on 06 October 2022. Tenant1 testified that he knows they have to move because relations are bad with the main floor tenants and the landlord.

14. The tenants' caseworker testified that she attends to the rental premises on a weekly basis and has been since January 2022. She testified that the inside of the unit is clean with no damages and that she cannot smell smoke in the unit. The caseworker requested that the tenants be given more time to find appropriate housing and testified that she has been attempting to help them secure new accommodations.

Landlord's Position

15. The landlord testified that the tenants had been good tenants until April 2022 when it is believed that two additional family members began residing in the rental unit. The landlord testified that he issued the following verbal notices to tenant1 in response to noise and smoke concerns received by text (L#3) from the main floor tenants:
 - 17 May 2022
 - 25 May 2022
 - 13 August 2022
16. The landlord submitted a copies of his call logs with tenant1 between 17 May 2022 and September 2022 in support of the timeline presented above (L#4). The landlord testified that he issued the termination notice on 01 September 2022 after receiving additional complaints from the main floor tenant (L#5). The landlord also submitted a sworn witness affidavit (L#6) from the main floor tenant [REDACTED], along with the Facebook status updates where she refers to the actions of the tenants in the bottom floor unit (L#7). The landlord read the contents of the affidavit into the record and referred to three videos depicting the tenants smoking while still inside their rental unit on three different occasions (L#8). One of these videos is taken at night, and the other two are captured during the daytime, one on a clear day and one on a cloudy day. The landlord also submitted a video of "noise" said to be captured by the main floor tenant from the downstairs, and the landlord testified that the main floor bedroom is located above the downstairs kitchen. The landlord stated that these four videos were captured by [REDACTED], the main floor tenant.
17. The landlord submitted an audio recording of a phone conversation he had with tenant1 on 06 October 2022 where tenant1 states that he filed for validity of notice as a "stall tactic" to buy him and his mom some more time to find a new rental. The landlord emphasized that the tenants have had enough time because he issued the termination notice on 01 September 2022 and the hearing occurred on 31 October 2022, two months later.

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. Tenant1 acknowledged receiving three verbal warnings from the landlord. Tenant1 also acknowledged the contents of an audio recording submitted by the landlord, with the two parties discussing how tenant1 acknowledges having to vacate the rental premises. Where tenant1 strongly denied that any interfering noise was being produced in his rental unit, by either himself, his mother or his aunt, he acknowledged that he continues to allow his aunt to reside in the rental premises. Regarding concerns with smoking, Tenant1 denied that smoking was occurring in the rental premises, but acknowledged that it occurs in the doorway of the premises on bad weather days. Tenant1 summarized his testimony by stating that he knows they need to move.
21. As mentioned in paragraph 19, interference can be caused by tenants and or persons that the tenants allow on the rental premises. The landlord testified that problems only started when tenant1's aunt began residing at the rental premises and as noted in the last line of paragraph 12, the aunt continues to reside at the rental premises. Based on this information, and supported by the witness affidavit and text messages supplied by the main floor tenant, I find that the landlord successfully established that the ongoing presence of the aunt, along with the tenants, has represented persistent disturbance to the main floor tenants and the landlord. I find that the landlord's peaceful enjoyment has also been interfered with because he has had to repeatedly contact the occupants of the rental unit in response to complaints received from the main floor tenants.
22. Specific to the nature of the interference caused to the main floor tenants, I accept the witness affidavit, and its summary of concerns with the number of occupants in the downstairs rental unit, their smoking, and concerns with noise. Where this noise complaint has been contested by tenant1, I will highlight smoking specific statement from the affidavit that reads as follows:

"There has been repeated and consistent periods of permeating cigarette smoke through my living areas which remains an interference to my peaceful enjoyment, health and wellbeing"

23. Although I acknowledge the testimony from the tenants' caseworker in paragraph 14 where she denies smelling smoke when visiting the rental premises, I also acknowledge that she only attends to the rental premises once a week, if that. As such, I give more weight to the witness affidavit provided and I recognize the interference of the smoke on the main floor tenants. Additionally, I acknowledge the three videos submitted of occupants in the downstairs unit smoking while still mostly inside of the rental unit. I find that these videos are significant in part because tenant1 testified. I also acknowledge that tenant1 himself admitted to there being smoking inside, even though he limited his acknowledgement to bad weather days. As noted in paragraph 16, each of the three videos appeared to have been taken perhaps on fine weather days.
24. As such, I find that the landlord successfully established on the balance of probabilities that the occupants of the downstairs unit (tenants and aunt) have created and continue to create an unreasonable disturbance that interferes with both the rights of the main floor unit tenants along with the landlord's right to maintain and manage their rental property.
25. 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.

26. 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

27. The termination notice issued on 01 September 2022 is a valid notice.
28. The landlord's claim for an order for an order of vacant possession is successful.

Hearing Expenses

29. The landlord claimed the \$20.00 expense of applying for hearing. As his claim has been successful, the tenants shall pay this hearing expense.

Summary of Decision

30. The termination notice issued on 01 September 2022 is a valid notice.
31. The landlord is entitled to the following:
- An order for vacant possession of the rented premises.
 - An order for payment in the amount of \$20.00 for hearing expenses.
 - The tenants 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.

01 November 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal