

Residential Tenancies Tribunal

Applications: 2022 No. 0837 NL

Decision 22-0837-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:16 AM on 31 October 2022 via teleconference.
2. The applicant [REDACTED] as represented by [REDACTED] and 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 did not submit an affidavit of service, but he provided proof of email service to the tenant on 28 September 2022 (L#1). The landlord testified that he served the email address [REDACTED] identified on the written rental agreement.
4. The details of the claim were presented as a recently established rental agreement that began on 01 August 2022. The monthly rate of rent is set at \$800.00, POU and a security deposit in the amount of \$350.00 was collected. A copy of the written rental agreement was not provided.
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 her by telephone at the provided number of [REDACTED]. 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 have 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 her absence.
12. The landlord testified that the rental premises is a four storey, [REDACTED] unit apartment building located at [REDACTED]. The tenant resides in unit [REDACTED].

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

13. The landlord testified that he issued a termination notice because the tenant smoked marijuana in the rental premises and smoking marijuana is against the lease. He also testified that the building is "*no smoking*" and that marijuana is to not be consumed anywhere on the rental premises as the smell interferes with peaceful enjoyment. The landlord provided a copy of the termination notice served (L#2) and testified that it was issued on 02 September 2022 with a stated move out date of 08 September 2022. The landlord referred to a text message chain with a former employee "[REDACTED] who wrote on 02 September 2022 that "[the tenant] has been served" (see page 2 in L# 3).
14. The landlord did not call any witnesses and acknowledged that he did not personally witness this marijuana smoking. He spoke further to say there were no previous marijuana complaints in the building, and that you could "*pretty much*

narrow it down pretty quickly" after the tenant took possession of her unit. The landlord also referred to another text message from [REDACTED] dated on 02 September 2022, where he wrote that "[the tenant] admitted to smoking weed in the apartment" (see page 1 in L#3). The landlord then referred to an additional document dated 24 October 2022 (see page 3 in L#3) but did not explain it in any detail. He did however testify that "*common sense should prevail*" and that his efforts to pursue an order of vacant possession should be proof, in and of itself, that there is a problem with the tenant.

15. The landlord went on to testify that the tenant would be welcome to stay if she did not smoke marijuana because "*he does not have any issues with her*". The landlord summarized his testimony by stating that the tenant "*violated the lease*".

Analysis

16. 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.
17. 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.
18. 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.*

19. In particular, I find that the notice issued on 02 September 2022 does not include the tenant's apartment number or postal code. It does not correctly identify the residential premises for which the notice is given as per 34(c) of the *Act* above and this means the notice is not valid. Because it was not a valid notice, the reasons for issuance have no additional bearing on a landlord's claim for vacant possession.
20. I will nonetheless briefly address the reasons provided for the benefit of the landlord who, in paragraph 14, argued that his application to this Tribunal should be evidence enough for his request order of vacant possession. This Tribunal has four Rules of Evidence that are available for review online:

<https://www.gov.nl.ca/dgsnl/files/LT-5-Guide-DRP-Evidence.pdf>

21. According to this document, adjudication is guided by the four principled criteria of Relevance, Reliability, Necessity, and Fairness and evidence must normally meet all four of these criteria in order to be accepted. Also of note, is that there are three core types of evidence: 1) Witness; 2) Documentary, and 3) Recorded.
22. Where the landlord argued that his participation in the dispute resolution process should be evidence enough, he also admitted that he was not a witness to the reported issue (e.g., the marijuana smoking). Furthermore, the documentary evidence he provided from others who were allegedly impacted by the issue (e.g., text from Todd and the Oct 24 message), was not reliable because the impacted persons were not identified or independently verifiable. The landlord's involvement in the dispute resolution process would have carried more weight (better satisfied the four rules of evidence) if he submitted sworn witness affidavits or called witnesses.
23. Also of note, is that the landlord failed to provide any sort of timeline related to the documented behaviour of concern (e.g., the marijuana smoking). Documented timelines and other related evidence can be useful for establishing on the balance of probabilities, that a specific behaviour or action represents a persistent "ongoing unreasonable disturbances" as required under the *Act*. Such evidence provides more weight to a landlord's claim than the testimony received in this dispute of, you could "pretty much" narrow down the source. "Pretty much" is not a relevant or reliable threshold of proof.
24. Instead, the termination notice issued on 02 September 2022 appears to have been issued because the tenant "violated the lease". Of note is that section 20 of the *Act*, Notice where material term of agreement contravened, is a separate tool available to landlords if and where they believe that tenants have "violated" their rental agreements.
25. In conclusion, I find that the section 24 notice issued on 02 September 2022 is not a valid notice because it was not served for a valid reason and it did not properly identify the residential premises.

Decision

26. The termination notice issued on 02 September 2022 is not valid notice.
27. The landlord's claim for an order for an order of vacant possession does not succeed.

Hearing Expenses

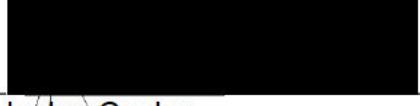
28. The landlord claimed the \$20.00 expense of applying for hearing. As his claim has not been successful, this amount will not be reimbursed.

Summary of Decision

29. The termination notice issued on 01 September 2022 is not a valid notice.
30. The landlord's claim for an order for an order of vacant possession does not succeed.
31. That the landlord's claim for payment of hearing expenses does not succeed.

03 November 2022

Date


Jaclyn Casler
Residential Tenancies Tribunal