

Residential Tenancies Tribunal

Applications 2022 No. 0848 NL

Decision 22-0848-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 1:54 PM on 11 October 2022 via teleconference.
2. The applicant [REDACTED], hereinafter referred to as "the landlord" participated in the hearing. He was supported by [REDACTED], his son in law, who will be hereinafter referred to as "the property manager" who also participated in the hearing.
3. The respondents [REDACTED] and [REDACTED], hereinafter referred to as "tenant1" and "tenant2" respectively, also participated in the hearing.
4. The landlord submitted an affidavit of service for each tenant, confirming that both were served personally on 23 September 2022 by the landlord and the property manager (L#1).
5. The details of the claim were presented as rental agreed that began in August of this year (2022). Monthly rent is set at \$700.00 exclusive of utilities and a security deposit in the amount of \$350.00 was collected. The rental agreement was said to be verbal and no written documentation was provided.
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.

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 is sections 10, 24 and 33 of the *Act*.

Preliminary Matters

10. The rental premises is a single family dwelling with two apartments located at [REDACTED]. The tenants reside in the basement apartment and the main floor apartment is occupied by a family of 4 who have been residing there for multiple years. It was noted during the hearing that both sets of tenants access their respective rental units from the same side of the house.
11. I gave leave to the tenants and landlord to submit their own individual copies of text messages sent between the tenants and the landlord, however only the landlord submitted his copy by the required deadline of end of day 11 October 2022 (L#2). I note that this copy appears to be a complete rendering of all text messages sent and received between the two identified phone numbers.

Issue 1: Vacant Possession

Landlord's Position

12. The landlord testified that he has been renting properties for 20 years and that this experience with the tenants has been "a first". He issued the section 24 termination notice on 20 September 2022 (L#3) after previously issuing an improperly completed termination notice on 18 September 2022. The notice dated 20 September 2022 is a standard template notice that identifies a move out date of 26 September 2022. The property manager testified that the notice was served in person and tenant2 acknowledged this service.
13. The property manager testified that the notice was issued because of a series of events that occurred between 29 August 2022 and 18 September 2022 that resulted in the attendance by the police at the rental premises "multiple times" including the following:
 - **29 August 2022:** The landlord was informed by the upstairs tenants of a loud noise early in the morning. The property manager attended on 29 August 2022 because the landlord was out of town, and spoke with both tenants. The property manager testified that he was informed that the door was broken by tenant2 because he was locked out of the rental unit by tenant1. The property manager submitted photos of the broken door (L#4).

- **05 September 2022:** The landlord attended the rental premises to determine how best to address the broken door. The property manager testified that the landlord wanted to assist tenant1 because she was “afraid of tenant2” and that this took the form of the landlord requesting that tenant2 vacate the rental premises. The property manager and landlord testified that the rental premises had been rented to tenant1 only, not tenant2.
- **06 September 2022:** The property manager testified that the landlord requested that tenant2 vacate the rental premises.
- **16 September 2022:** The property manager testified that the RNC were called to the rental premises and that he and the landlord also attended. He testified further, that the RNC kept tenant1 and tenant2 separate because all parties were allegedly concerned that tenant2 was improperly influencing tenant1. The property manager testified that the following decisions were made on this day:
 - i. That tenant1 would go stay with family for a few days.
 - ii. That the landlord would pack up all of the tenant1’s belongings and furniture and store it to encourage tenant2 to move out;
 - iii. That tenant2 would be given a few days to move out;
 - iv. That once tenant2 moved out, tenant1 could return to the rental premises.
- **18 September 2022:** The property manager testified that the landlord was contacted by the RNC regarding the tenants’ possessions (in storage) as tenant2 remained in the rental unit. It was also mentioned how the tenants were allowed access to some possessions with support of the police at a later date.

14. The landlord referred to a witness affidavit that was submitted by the female tenant residing in the main floor apartment of the rental premises (L#4). He testified that these tenants have resided in the rental premises for multiple years with no problem. The landlord testified that the tenants in the main floor are “working individuals” and they are disrupted by the noise from the basement and the frequency with which the police have been called to attend to the basement tenants. The property manager testified that the landlord attended the rental premises on 18 September 2022 because tenant2 was to have vacated, but that he had not. Consequently, the section 24 termination notices were issued on 18 September 2022 and 20 September 2022.

15. The property manager testified repeatedly that he need “immediate resolution” to things with the basement tenants. He also testified that the tenants would text the landlord excessively and the landlord repeatedly testified that there was a single message from tenant2 that was “38 lines long”. The property manager denied knowledge of the tenants’ mental health concerns but acknowledged that tenant2 is part of an at home IV treatment program.

Tenants' Position

16. The tenants were quiet during the landlord's and property manager's testimony and only spoke when specifically requested during the hearing. They both testified that they are in a committed relationship with each other, that they love each other and that they consider themselves common-law spouses. Tenant1 testified that she is 27 years old, that she has borderline personality disorder and anxiety, and that she has not been working since the spring. Tenant2 testified that he was in the hospital in summer 2022 as a result of a "life threatening infection" and that he moved into the rental premises in mid August 2022. Tenant1 rejected the landlord's testimony and stated that she has been upfront with the landlord that she would be living with her boyfriend in the rental unit.
17. The tenants agreed that they fight, that these fights can, "look crazy" and "get intense" but that they are not safety risk and that they only happen "occasionally". Tenant1 testified that even when fighting they are able to calm down as needed. Regarding the series of events that occurred, the tenants spoke of the following:
 - **29 August 2022:** Tenant2 testified that tenant1 had not been sleeping and was not taking her medication. This resulted in her threatening to commit suicide and locking tenant2 out of the house. Tenant2 testified that he broke the door of the rental unit because he feared for tenant1's life and that the door was the only way into the rental unit. Tenant2 also testified that he flagged down the police for support that night.
 - **Earlier in September:** An ex-boyfriend of tenant1 attended to the rental premises, which tenant1 indicated is not legally permitted due to some form of protection order. Tenant2 testified that he did his best to protect tenant1 and that the police were contacted because of this ex-boyfriend.
 - **16 September 2022:** Tenant2 testified that tenant1 attended to the rental premises with her grandma and that they found tenant2 passed out on the ground as a result of some septic shock. Because of this, they called repeated words emergency services for support.
18. The tenants both testified that they have been living in the rental unit without their full possessions since 16 September 2022 after these possessions were packed up and put into storage by the landlord. Tenant1 testified that she was eventually able to get access to her bed, but that she is still missing her couch and other personal items. Tenant1 testified that she pays rent by providing the landlord with money she receives from AES, and that she has not paid rent for October 2022.
19. When asked to comment on why they believed they were issued a termination notice, tenant2 testified that he believed the landlord and property manager were taking advantage of tenant1 and improperly involving themselves in the tenant's relationship. Tenant2 spoke about how he finds it odd that the landlord and property manager are so involved in their relationship. Tenant2 testified that he believed the landlord and property manager were manipulating tenant1 and deliberately not informing her of her rights as a tenant. Tenant1 testified that the

health of tenant2 has been negatively impacted by their residing in the rental premises as a result of the actions of the landlord and property manager.

20. Tenant2 testified that the landlord and property manager have made the rental premises uninhabitable by removing and not returning the tenant's personal belongings. He also testified, that at no point, did the landlord or property manager submit an official request in writing to have tenant2 only be removed from the rental premises. Regarding the upstairs neighbours, both tenants testified to previous efforts to apologize and make nice after the events of 29 August 2022 and earlier in September after the ex-boyfriend attended the rental premises. Tenant2 testified that things have however been strained with the upstairs tenants ever since they were issued the termination notice.

Analysis

21. 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.
22. 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.
23. Because the landlord and property manager made multiple references to the text chain between the landlord and the tenants, I reviewed all text messages sent between 05 August 2022 and 23 September 2022 (L# 2). Where the property manager had alleged that the tenants texted excessively, I found no evidence of this and with respect to the "over 38 lines long" text from tenant2 (see pages 37-39 in L#2), I found this to be a reasonable and comprehensive statement declaring no further communication and also documenting:

"For two people renting multiple properties for years let's be honest you knew you were taking advantage of my fiancé because she was naïve and easily coercible and not experienced or knowledgeable with tenant rights or criminal matters. You wouldn't of gotten involved in a relationship if she wasn't a "beautiful young girl who could do way better than that thing your with."

24. I found that this statement from tenant2 summarized my experience of the hearing as well because the testimony put forward from the property manager and landlord did not line up for me, with the testimony put forward by the tenants. In particular, I was given the impression that the landlord and property manager were intervening to “protect” tenant1 from some dangerous individual, and not the faint sounding, polite and reasonable individual to whom tenant1 communicated support and not fear. Regardless, neither impression is relevant to the issuance of a termination notice under section 24 of the *Act* for Interference because the *Act* sets out requirements and obligations for landlords and tenants as landlords and tenants, and not as interveners in a domestic relationship.
25. Consequently, I find the majority of evidence and testimony presented by the landlord and property manager to be irrelevant to their issuance of the section 24 termination notice under the *Act* since they were predominately concerned with having tenant2 only vacate the rental premises. However, the termination notice on file is issued to both tenant1 and tenant2. As evidence of the landlord’s predominate focus, I note the following example text messages, all of which occurred before a termination notice was issued:

06 September

“Are you moved out”
“Is your friend moved out”
“He has to move out before we come down”

07 September

“Are you moved out”
“Are you moved out”
“Not moved out yet”
“Are you moved out? I take that’s a no so will take the next step”

16 September

“Please be out before we get there. Are you out”
“All I know Mark you told me you were moving as we discussed so now I have to do what I have to do, not what I take joy in doing”

26. Furthermore, where the landlord and property manager testified that they were operating in response to the requests from tenant1, who was allegedly fearful of tenant2, I did NOT observe a single written request for protection or otherwise, in this text message chain provided or in the hearing. Instead, I only found multiple apologetic examples of text responses from the tenants to the landlord. Consequently, I find that the landlord and property manager failed to establish on the balance of probabilities that the actions of the tenants exceeded, or even came close to meeting the threshold of the requirement for successful issuance of a termination notice for interference. If anything, it appears to me as though the landlord and property manager were persistently interfering in the ability of the tenants to reside peacefully in their rental premises.

27. Regarding the witness affidavit from the upstairs neighbour, I accept that there were a series of disruptive events that occurred between August 2022 and September 2022, however, I find that these events were circumstantial and not meant to interfere with the others (intentionally or otherwise). For instance, the threat of suicide on 29 August 2022, should prompt an immediate response, such as a broken door by all parties, likewise, the police should be called when someone such as a dangerous ex-boyfriend attends, as should emergency services be called when people are found passed out on the floor, as the tenant2 was on 16 September 2022.
28. Additionally, as shown in the testimony from the property manager and captured in paragraph 13, I find the landlord and property manager partially responsible for the main floor tenant's concern with the frequency of police visits to the rental premises. I say this because the landlord and property manager willfully removed tenant possessions from the rental premises and would not return them, despite repeated requests from their tenants. The property manager also testified to how this removal of possessions was designed to encourage tenant2 to vacate the rental premises, which is contrary to section 33 of the Act which states:

Seizure of property

33. A landlord shall not take a tenant's personal property to compensate for a contravention of an obligation by the tenant, including a failure to pay rent.

29. As such, I find that the landlord and property manager failed to convince me on the balance of probabilities that these events represented "unreasonable" actions on behalf of the tenants that were worthy of a termination notice under section 24 of the Act. This is to say, that I find the termination notice issued on 20 September 2022 was not issued for a valid reason. Because the notice was not issued for a valid reason, it is not a valid notice.

Summary of Decision

30. The landlord's claim for an order of vacant possession does not succeed.

14 October 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal