

Residential Tenancies Tribunal

Application 2022-0867-NL

Decision 22-0867-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:09 a.m. on 26-October-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED] hereinafter referred to as “tenant1 and tenant2” did not attend.
4. The landlord’s property manager, [REDACTED], hereinafter referred to as “the property manager,” attended by teleconference.

Preliminary Matters

5. The tenants were not present or represented at the hearing and when I contacted tenant1 by telephone ([REDACTED]), at the start of the hearing, she disconnected the call. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. 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 respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents’ absence so long as they have been properly served. The landlord submitted an affidavit (LL#01) with her application stating that the property manager had served the tenants with notice of the hearing, in person, by giving both notifications to tenant1, on 13-October-2022. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issues before the Tribunal

6. The landlords are seeking
 - Vacant possession
 - Hearing expenses reimbursed \$20.00

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*.
8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Section 19: Notice where failure to pay rent, Section 22: Notice where tenant's obligation not met, and Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy.

Issue 1: Vacant Possession of the Rental Premises

Landlord's Position

9. The landlord said that she had entered a written term rental agreement with the tenants (TT#02). She said that the tenants moved in on 11-September-2022. The agreement is from 11-September-2022 until 31-August-2023. She said that they worked out a prorated amount of rent for September of \$1,000.00 and that the rental periods after September would be from the 1st day of the month until the last; with \$1,500.00 due on the first day of each month. She said that the tenant paid a security deposit of \$1,125.00 in two separate installments: the first payment was with the rent for \$1,000.00 on 11-September-2022 (LL#04) and the second installment was for \$125.00, on 21-September-2022 (LL#05).
10. The landlord submitted pictures (LL#07 & LL#08) and text (LL#11) evidence to show that the tenants had broken windows in their upstairs unit and a window in the downstairs apartment. The property manager had the windows repaired and had come to an agreement with the tenants to retain this cost from the security deposit. The property manager said that the replacement glass cost \$350.00. The tenants now have a security deposit of \$775.00.
11. The landlord said that there were no rent payments made after the initial payment on 11-September-2022. The property manager said that she had text conversations (LL#11) with the tenant about the overdue payment. After she sent the termination notice (LL#03) tenant1 said in the texts (LL#11) that rent isn't due until the 11th. The property manager said that the tenants are aware that rent is due on the 1st and that the first month is a prorated amount. She provided the rental agreement (LL#02) which shows in section 7 that rent is \$1,500.00 and due on the 1st day of each month.
12. The property manager submitted the termination notice (LL#03). The notice is on a "landlords notice to terminate early" the reason for the notice is failure to pay rent. The notice is signed by the landlord on 07-October-2022 with a termination date of 18-October-2022. The authorized representative said that she sent the tenants the termination notice to both of their emails on 07-October-2022 at 1:03 p.m.
13. The termination notice for failure to pay rent is the second notice served to the tenants. The first notice was submitted into evidence (LL#06). This notice is also on a "landlord's notice to terminate early" form, the reasons are failure to keep the premises clean and to repair damage as well as interference with peaceful enjoyment and reasonable privacy. This notice is also signed by the landlord. It is dated for 22-September-2022 with a

termination date of 28-September-2022. The property manager said that this notice was also sent to both emails on 22-September-2022 at 3:24 p.m.

14. The property manager said that in addition to the broken windows the downstairs tenant made her aware that tenant1 and tenant2 had put a lot of exercise equipment out on the lawn, she provided a picture (LL#09). The property manager also received a notice from the town of [REDACTED] (LL#10) telling her that due to the debris around the front of her property, they are in violation of Section 106(1) (a) of the Urban and Rural Planning Act and could be subject to a fine of not less than \$500.00 and not more than \$1,000.00. The property manager made the tenants aware that this was an issue. The tenants did remove the debris after being contacted by the property manager.
15. The other reason on the first termination notice (LL#06) is interference with peaceful enjoyment and reasonable privacy. The property manager said that the upstairs unit has a smell of smoke from weed and there is a dog which are both violations of the rental agreement (LL#02). In addition to this she said that tenant2 gave her a false name.
16. The downstairs tenant and the parent of one of the tenants have voiced concerns about the upstairs tenants. The police have been to the house a number of times. The upstairs tenants frequently fight and scream at each other.
17. The property manager said that the police have been in contact with her and informed her that tenant2 has a restraining order and isn't allowed to be in contact with tenant1 and that they are certainly not allowed to be in a rental agreement together. She said that tenant2 was arrested because of the contact.
18. The property manager was contacted by the police and asked to let them in because they were trying to do a wellness check and there was no answer at the door. When she opened the door for them, she said that, the tenants were both in the house just sitting on the couch. She said that she was convinced that when they opened the door that they were going to find tenant1 dead in the house.
19. The police have told the property manager to be careful when going to the house, they said that tenant2 could be dangerous and she shouldn't go there alone.
20. The property manager said that the fighting is ongoing. She said that the complaints are frequent and that if this issue isn't resolved the downstairs tenants will not stay. She said that the only reason that they are still there is that they are aware that the landlord and property manager are taking steps towards eviction.

Analysis

21. Both of the termination notices are valid.
22. The termination notice with a termination date of 18-October-2022 for failure to pay rent was served under Section 19, of the *Residential Tenancies Act, 2018*, which states:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

.....

(b) where the residential premises is

(i) rented from month to month,

(ii) rented for a fixed term, or

(iii) a site for a mobile home, and

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

.....

(4) 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.

.....

23. The tenant was in rent arrears in excess of the 5 days when the notice was served. On the date of termination, the tenant was still in arrears. The termination notice meets the requirements of the Act and is a valid notice. The notice was served in accordance of the Act.

24. The tenant should have vacated the property by 18-October-2022.

25. The second notice served to the tenants with a termination date of 28-September-2022 does not succeed for Section 22: Notice where tenant's obligation not met which states:

Notice where tenant's obligation not met

22. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 2 set out in subsection 10(1), the landlord may give the tenant notice requiring the tenant to comply with the condition.

The tenants were given notice, however, they did comply with the notice, and removed the debris from the yard, and therefore the termination notice is not successful for this cause.

26. The termination notice however, also lists Section 24: Notice where a tenant interferes with peaceful enjoyment and reasonable privacy.

Statutory condition 7.(a), set out in section 10.(1) of the *Residential Tenancies Act, 2018* states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

....

7. Peaceful Enjoyment and Reasonable Privacy -

(a) The tenant shall not unreasonably interfere 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.

(b) The landlord shall not unreasonably interfere with the tenant's reasonable privacy and peaceful enjoyment of the residential premises, a common area or the property of which they form a part.

According to Residential Tenancies Policy 7-05 Peaceful Enjoyment, interference of peaceful enjoyment is defined as: "an ongoing disturbance or activity, outside of normal everyday living, caused by the landlord or the tenant". Peaceful enjoyment may include, but is not limited to the following: (i) excessive noise; (ii) aggressive or obnoxious behaviour; or (iii) threats and harassment.

27. I accept the testimony and evidence provided by the property manager and find that the ongoing fighting and police presence at the house does meet the description of interference with peaceful enjoyment.
28. I find that the tenants are interfering with the rights of the downstairs tenants; I therefore find that the notice served by the landlord is a valid notice and was served in accordance with the Act. The tenant should have moved by 28-September-2022.

Decision

29. The landlord's claim for vacant possession succeeds.

Issue 2: Hearing expenses reimbursed \$20.00

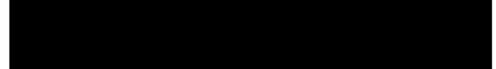
30. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#14) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

31. The landlord's claim for an order for vacant possession succeeds.
32. The tenant shall vacate the premises immediately.

33. The tenant shall pay to the landlords any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.
34. The tenants shall reimburse the landlord \$20.00 for their hearing expenses.

October 28, 2022 —
Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office