

Residential Tenancies Tribunal

Application 2022-0941-NL

Decision 22-0941-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:07 p.m. on 10-November-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” attended by teleconference.
4. The landlord provided an authorized representative form naming [REDACTED], hereinafter referred to as “the authorized representative” attended by teleconference.

Preliminary Matters

5. The landlord submitted an affidavit (LL#01) stating that the authorized representative served the tenants with notification of today’s hearing personally, at the health science hospital on 29-October-2022. The authorized representative and tenant1 confirmed this service.
6. There has been a previous decision concerning these parties on 2022-0848-NL, this order, dated for 14-October-2022, determined that a previous termination notice for interference with peaceful enjoyment was not valid.

Issues before the Tribunal

7. The landlord is seeking
 - Vacant possession of the rental premises.

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*.

9. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 7: Provision of rental agreement, Section 10: Statutory conditions, Section 19: Notice where failure to pay rent and Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy.

Issue 1: Vacant Possession of the Rental Premises

Landlord's Position

10. The authorized representative stated that the landlord has a verbal rental agreement with the tenants. The tenants moved in on 01-August-2022 and they are still living there. They pay \$700.00 per month on the first day of each month and utilities are not included. They paid a \$350.00 security deposit on 21-July-2022 and the landlord is still in possession of that deposit.
11. The landlord acknowledges that he did provide the tenant's income support worker with written documentation of the rental agreement terms.
12. The authorized representative said that they served the tenants with two termination notices. The first notice (LL#04) is on a landlord's notice to terminate early for failure to pay rent. It is signed and dated for 17-October-2022 with a termination date of 28-October-2022. There is a note on the bottom of the notice saying it was delivered in person on 17-October-2022 at 4:30 p.m. The authorized representative said that he and the landlord delivered this to the tenants.
13. The authorized representative said that the tenants have not paid rent since the payment made on 01-September-2022 and that the tenants owe for both October and November rent. They submitted a rent ledger (LL#06) showing the same.
14. The landlord acknowledges that he didn't provide the tenants a copy of the *Residential Tenancies Act, 2018*.
15. The landlord also served a second notice (LL#03) for interference with peaceful enjoyment and reasonable privacy. It is signed and dated on 20-October-2022 with a termination date of 26-October-2022. There is a note at the bottom stating it was served to the tenants on 20-October-2022. The authorized representative confirms that he and the landlord served this notice to the tenants on 20-October-2022.
16. The authorized representative said that the landlord received a call on the evening of 19-October-2022 at around 9:30 p.m. saying that there was a loud noise from downstairs and that they were concerned. They said that tenant2 went out to get something from a passing car and when he came back to the apartment there was a lot of noise.
17. The landlord said he showed up and that the window to the apartment door was broken. He contacted the authorized representative who came to the scene at 10:05 p.m.
18. The authorized representative said when he arrived tenant2 was being aggressive and that both he and tenant2 called the police who came to the property.

19. The authorized representative said that during the commotion tenant1 came to the apartment and that she was fearful of tenant2 and hid behind him (the authorized representative).
20. The landlord said that the upstairs tenants are long term tenants and their lives are being disrupted by the downstairs tenants. He said that they had given sworn statements before and felt let down by the process. He said that they wouldn't provide testimony for today's hearing.
21. The authorized representative pointed out that the tenants only moved in August and there has been a number of times that the police have attended the house.
22. The landlord is seeking possession of the property.

Tenant's Position

23. Tenant1 confirms the details of the rental agreement as stated by the authorized representative. She said that she has a written agreement that was given to Income Support.
24. Tenant1 acknowledges that they have not paid this rent and she states that the landlord didn't provide her a copy of the *Residential Tenancies Act, 2018*. She believes that until he does provide the Act she is not obligated to pay rent.
25. The tenants acknowledge receipt of the second notice as stated by the authorized representative.
26. Tenant2 said that he accidentally broke the window in the door. He had locked himself out and must have hit the door a bit too hard. He disputes that they should be evicted just because he accidentally broke the window.
27. Tenant1 said initially that she wasn't fearful of tenant2 but later acknowledged that when she came home first, she didn't understand what had happened and did hid behind the authorized representative when she came home.

Analysis

28. According to Section 7 of the *Residential Tenancies Act, 2018*,

Provision of rental agreement and information

7. (1) At the time a landlord and tenant enter into a rental agreement, the landlord shall provide the tenant with a copy of this Act and the regulations, and where requested by the landlord, the tenant shall sign an acknowledgement of receipt.

(2) Where a landlord and tenant enter into a written rental agreement, the landlord shall provide the tenant with a copy of the signed rental agreement within 10 days after it is signed, and where requested by the landlord, the tenant shall sign an acknowledgement of receipt.

(3) Where a landlord and tenant enter into an oral or implied rental agreement, the landlord shall provide the tenant with a written notice containing the information prescribed in the regulations within 10 days after entering into the rental agreement, and where requested by the landlord, the tenant shall sign an acknowledgement of receipt.

(4) Notwithstanding the terms of a rental agreement, where a landlord has not complied with subsection (2) or (3), the tenant's obligation to pay rent is suspended and the landlord shall not require the tenant to pay rent until the landlord complies with subsection (2) or (3).

(5) Where the landlord has complied with subsection (2) or (3), the tenant shall pay all rent withheld from the landlord under subsection (4).

(6) Rent paid by the tenant to the landlord while the tenant's obligation to pay rent is suspended under subsection (4) may be retained by the landlord.

29. The tenant has been under a misunderstanding concerning the Act and that she believes that she doesn't have to pay rent if she hasn't been provided a copy of the Act. In fact, she may withhold rent if the landlord doesn't provide her with written terms of the verbal rental agreement. This doesn't apply to not providing her with a copy of the Act. Both tenant1 and the landlord agree that she was provided with written confirmation of her rental terms which was provided to her income support worker.
30. Non-payment of rent is a violation of the rental agreement. Both the parties confirmed that rent was not paid after September and there is no dispute on this issue.
31. The landlord served the first notice under Section 19, of the *Residential Tenancies Act, 2018*. The notice is signed and dated for 17-October-2022, with a termination date of 28-October-2022. The landlord served the tenant with the notice on 17-October-2022. Section 19 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.

.....

32. The tenants acknowledge that they are in rent arrears beginning 02-October-2022. 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.
33. The landlord's second notice replaces the first notice as it is served after the date of the first notice and also has an earlier end date. The second notice was signed and dated on 20-October-2022 with a termination date of 26-October-2022 and is for interference with peaceful and enjoyment. The notice was served to the tenants in accordance with the Act on the day signed.
34. A termination notice for interference with peaceful enjoyment must be proven by the landlord. The tenants must be shown to be acting in a way that interferes with the rights of other tenants in the home.
35. 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.

36. Tenant2 disputes that the breaking of a window, accidentally, should be the cause of the issuance of a termination notice. On the face of this argument, the tenant would be correct in this assumption. However, at hand here is not only the breaking of the window, there is also an issue of the tenant acting aggressively towards the landlords, as well as, the police being called to the home, not for the first time, and in addition to this, the previous notice and subsequent hearing for the same issue which was issued less than a week before this incident.

37. On its own, the breaking of the window in the door would not be cause for a termination notice. However, in consideration of the tenants moving in August of 2022 and the subsequent issues of ongoing noise, aggressive and threatening behavior, it has been shown that the tenants either, do not know how to live peacefully with others, or are choosing not to live peacefully with others. The behavior is having an impact on the other tenants, as well as, the landlords and the behavior is outside of everyday living and ongoing. I therefore accept the testimony of the authorized representative and landlord and find that the tenants are interfering with the rights and privileges of the upstairs tenants.
38. I find that the second notice with a termination date of 26-October-2022 does meet the requirements of the Act and is a valid notice. The tenant's should have moved on that date.

Decision

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

Issue 2: Hearing expenses reimbursed \$20.00

40. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#05) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

41. The landlord's claim for an order for vacant possession succeeds.
42. The tenant shall vacate the premises immediately.
43. 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.
44. The tenants shall reimburse the landlord \$20.00 for their hearing expenses.

November 17, 2022

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office