

Residential Tenancies Tribunal

Application 2022-0947-NL

Decision 22-0947-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 21-November -2022.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach her by telephone at the start of the hearing. I called her number ([REDACTED]) and left a message. 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 respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent’s absence so long as she has been properly served. The landlord submitted an affidavit (LL#01) with his application stating that he had served the tenant with notice of the hearing, in person on 27-October-2022. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

Issues before the Tribunal

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

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

7. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, 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

Relevant Submissions

8. The landlord submitted the rental agreement (LL#02) held with the tenant. The agreement is for a one year term beginning 15-December-2021 and ending 15-December-2022. The tenant pays \$600.00 per month on the 1st day of each month. She also paid a security deposit of \$300.00 on 15-December-2021. The landlord is still in possession of the deposit.
9. The landlord said he took over management of the property on 01-September-2022. He said that he served the tenant with a termination notice (LL#03) on 25-October-2022, in person, with a termination date of 31-October-2022. The reasons for termination are for violation of Section 22 and Section 24 of the *Residential Tenancies Act, 2018*.
10. The landlord submitted a policy that he had each tenant sign (LL#05) and he said that that the tenant has signed the policy. The policies are: that there will be a zero tolerance policy of any act of violence or harassment towards staff, management or other tenants, as well as, a policy for garbage disposal.
11. The policy on garbage removal states that the property is to be kept clean and tidy. Garbage is to go in the bin provided. Recycling and excess garbage is not to be stored on the deck or outside the home. Bulk garbage is to be disposed of at the tenant's expense.
12. The landlord said that for 7 consecutive weeks the tenant did not comply with the policy for garbage disposal. He said that the tenant has multiple garbage bags, furniture, recycling, household items, rugs, etc. around her residence. He said each week the staff knock on her door and ask her to comply with the garbage policy each week, to no avail.
13. The landlord did not provide pictures. He said he did not give her written notification to clean up the garbage around her home.
14. The other reason listed for termination is interference with peaceful enjoyment. The landlord said that even though there is a zero tolerance policy in place, there have been issues with this tenant. Subsequently some of the other tenants (about six) have threatened to move.
15. The landlord said he has had personal experience with the tenant where she has been threatening. He said that she has said, she is a call girl and she can "get down and dirty with him" she also said she can "find out where he lives."

16. He said that other tenants have complained about the noise and people coming and going all hours of the night.
17. The landlord said that she stole a t.v. belonging to another of his tenants and the police were called. He said that the outcome was that she had to return the t.v. He said that he was trying to get the file numbers from the police, but they hadn't gotten back to him yet.
18. The landlord said that after he gave her the termination notice he received a letter (LL#04) from NL Power informing him that the tenant has cancelled her service and that the power bill will come back into his name after 31-October-2022. He said that this is in violation of the rental agreement.
19. He said that the tenant told him she knows the system and that she'll still be living there for the next six months and she won't pay rent. She said that it will take him that long to get her out.
20. The landlord is seeking an order of possession.

Analysis

21. In accordance with Section 22 of the Residential Tenancies Act, 2018

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.

(2) Where a tenant contravenes statutory condition 2 set out in subsection 10(1) within 3 days after the notice under subsection (1) has been served or within a reasonable time, 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.

Section 10 is as follows:

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:

.....

2. *Obligation of the Tenant* - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

22. The landlord's testimony is that the tenant is in violation of Section 10 and she is not adhering to the policy, required by her landlord, to maintain her property to a certain

standard. However, the landlord has testified that he did not serve her with written notice nor has he provided evidence (i.e. photos) to show that the violation exists.

23. The landlord has not met the requirements laid out in the *Act* that the landlord is to give the tenant written notice to complete required repairs and a reasonable amount of time to comply. Only after he has taken these steps, can he serve the tenant notice of termination. For this reason, I find that the landlord's claim for an order of possession for violation of Section 22: Notice where tenant's obligation not met, fails.
24. The landlord had also listed Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy, as cause for termination 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.

25. The landlord has testified that the tenant has been in violation of all three of the above listed behaviors that would be considered a violation. The landlord's own personal experience carried the burden of proof for this claim. As the landlord testified that the tenant was threatening to himself.
26. I accept the testimony of the landlord that the tenant has been threatening and find that she is in violation of Section 24 of the Residential Tenancies Act, 2018. I therefore find that the notice served by the landlord is a valid notice and was served in accordance with the *Act*.

Decision

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

Issue 2: Hearing expenses reimbursed \$20.00

28. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#06) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

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

30. The tenant shall vacate the premises immediately.

31. 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.

32. The tenants shall reimburse the landlord \$20.00 for their hearing expenses.

November 28, 2022

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office