

Residential Tenancies Tribunal

Applications: 2022 No. 0949 NL

Decision 22-0949-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 2:03PM on 29 November 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing, as did his lawyer, [REDACTED], who is hereinafter referred to as "the landlord's representative".
3. The respondent, [REDACTED], hereinafter referred to as the tenant participated in the hearing, as did his lawyer, [REDACTED], who is hereinafter referred to as "the tenant's representative".
4. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served electronically on 15 November 2022 and the tenant confirmed service.
5. The details of the claim were not straight forward. The tenant began residing in the premises located at [REDACTED] in late 2013. It is understood that he resides there with his wife. The tenant's representative provided a copy of a 2014 Lease to Own agreement signed by the landlord and tenant for purchase of the premises (T#1). The landlord testified that there were multiple attempts to sell to the tenant in 2014 and that the agreement provided did not prevail past 2014 because no sale occurred. In contrast, the tenant testified that he continues to reside in the premises today because he signed a rent to own agreement.
6. The landlord's representative testified that there was a verbal agreement for the tenant to reside at the premises from 2014 onwards in exchange for rent, however, there is a \$6000.00 shortfall after all expected monthly payments and any additional sums are tallied up. He also referenced a recent sales agreement signed by both parties on 30 September 2022 and testified that if there were a rent to own agreement in place, this would have been referenced in the sales agreement. The landlord's representative testified further that this agreement

terminated on 14 October 2022 when the tenant failed to secure required financing.

7. Because this agreement appeared potentially relevant to understanding the nature of the relationship between the landlord and tenant, I requested that all documentation related to this agreement be provided after the hearing. Copies were then provided to myself and the tenant's representative who did not previously have access to sales document (L#2). The landlord testified that the premises are assessed at \$\$350,000.00 and that he agreed to sell for \$295,000.00 (in the 30 September 2022 agreement) because that was the amount the tenant stated he could pay. Regarding the tenant's insistence that the landlord pay a sum of money to the tenant on the closure of a property sale, the landlord and landlord's representative both testified that this was never signed and occurred prior to the signed 30 September 2022 agreement.
8. The tenant's representatives requested that the entire matter be dismissed because the Director of Residential Tenancies does not have jurisdiction over this rent to own agreement. The tenant testified that he is currently residing in the rental premises because he has had a rent to own agreement with the landlord since 2014. He also testified that he previously had a positive relationship with the landlord prior to everything going "sideways". The tenant's representative testified that the landlord's representative made an improper inference in his statement that any active rent to own agreement would be referenced in the sales agreement dated 30 September 2022. As evidence of a rent to own agreement, the tenant's representative testified that he is still waiting on all bank records, but that he initially calculated in one year alone that the tenant paid \$23,500 towards the equity of the premises. The tenant's representative also repeatedly testified to a different amount of money that the tenant was allegedly waiting to be paid to him as part of any property sale. Regarding monies paid by the tenant to the landlord for continuing use and occupation of the premises, the tenant testified that of the \$2000.00 paid each month prior to 2020, 25% was to go to equity. He also testified that monthly payments were reduced to \$1,500.00 based on an agreement between the two parties, a statement that was disputed by the landlord.
9. 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

10. The landlord is seeking an order for vacant possession.

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
12. Also relevant and considered in this case are sections 4, 10 and 24 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

13. The first matter to determine was that of jurisdiction. To that end, I reviewed the 2014 (T#1) agreement and the 2022 agreement (L# 2) for purchase of the premises located at [REDACTED] because an option to purchase is a separate contract from the rental agreement.
14. Where the landlord's representative argued that the 2014 Rent to Own Agreement was a short term agreement, both parties and their representatives agreed that the landlord and tenant did not sign a subsequent Sales agreement (Vendor and purchaser) until 30 September 2022. Everything until that point was verbal. This is relevant because the *Residential Tenancies Act* permits "oral or implied rental agreements" but matters of property sales require documentation. Consequently, I accept the argument put forth by the landlord's representative that the 2014 agreement did not prevail past 2014 and that the relationship between the landlord and tenant has continued as a landlord tenant relationship since that time.
15. Accordingly, I find that I have jurisdiction on this matter.

Issue 1: Vacant Possession of Rented Premises

Landlord's Position

16. The landlord issued a notice of termination notice on 16 October 2022, with a stated move out date of 22 October 2022 (L#3). The notice was posted to the door of [REDACTED], and proof of this was provided (L#4). The notice was also served by email to the tenant. The notice was issued under section 19 and 24 of the *Act*. The landlord's representative acknowledged that this notice would only be tested for section 24 because the stated timeline between issuance and move out (e.g., between 16 and 22 October 2022) was insufficient for notice of termination for non payment of rent.
17. The landlord's representative testified that the notice was issued after it became clear to the landlord that the tenant would not actually purchase his property. He also referred to and read into the record sections of text exchanges between the landlord and tenant (L#5) regarding the tenant's failure to provide keys to the rental premises so that the landlord could engage in selling the property to others. The landlord's representative testified that this was the "final straw" that

led to the termination notice being issued. When asked why the landlord could not rely on the tenant to facilitate access for house sale purposes, it was said that the relationship between the two men was “frustrating”.

18. The landlord’s representative also testified that the landlord had been depending on the sale of the property to the tenant (to close 14 October 2022) so that the landlord could purchase a separate property. Once the tenant’s sale did not go through, the landlord’s representative testified that the landlord was forced to refinance the rental premises. The landlord submitted an email from one realtor’s account of the tenant’s allegedly obstructive behaviours in 2014 (L#6) as well as a letter on another realtors’ professional letterhead also attesting to similar obstructive behaviour a few days after the termination notice was issued (L#7).

Tenant’s Position

19. The tenant acknowledged the text exchange submitted as an accurate representation of messages sent between the landlord and tenant. The tenant’s representative testified that these exchanges were supplemented by a series of phone calls. The tenant’s representative testified that the tenant at no point changed the locks to the rental premises and found it odd that the landlord was requesting keys. He then referred to the text exchange submitted and also testified that the tenant and landlord met on 17 October 2022 (the day after the termination notice was issued) to exchange keys as requested. The tenant testified that he has been cooperative, and that he takes good care of the rental premises, having done a lot of work on it himself, including replacing all appliances.

Analysis

20. 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 there was cause for issuance of a short notice (e.g., not less than 5 days). This means that they must successfully establish how the tenant contravened statutory condition 7(a) (section 10(1) of the Act) and 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.
21. 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.

22. As identified in paragraphs 5 and 6 the landlord has repeatedly attempted to finalize the sale of his rental premises to the tenant. The tenant himself, testified that he continues to reside in the rental premises because he has a “rent to own agreement” which suggests intent to purchase on behalf of the tenant. However, at least eight years have gone by (since the 2014 lease to own agreement was established) and the tenant has not purchased the property. Furthermore, as noted in paragraph 17, the landlord and his representative testified that the tenant has also prevented the landlord from selling the property to others.
23. My own observations of interactions between the landlord and tenants during the hearing were consistent with the landlord’s own depiction of “frustration”. I say this because, the tenant repeatedly expressed awareness of a once positive relationship having gone “sideways” but did not appear to understand the impact of his own actions on others, such as his landlord.
24. Consequently, I find that the landlord successfully established on the balance of probabilities that the tenant has unreasonably interfered with landlord’s attempts to operate his rental premises, which in this case, was to dispose of it at a discount (\$295,000.00 instead of the assessed \$350,000.00) to a long term tenant. Accordingly, I find that the landlord was justified in issuing the tenant a section 24 notice on 16 October 2022.
25. In addition to requiring that the notice be issued for a valid reason, a termination notice issued under section 24 of the *Act* must also meet the following requirements as set out in the *Act*:

Notice where tenant contravenes peaceful enjoyment and reasonable privacy

24. (1) *Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 7(a) set out in subsection 10(1), 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.*
- (2) *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.*

26. The notice issued on 16 October 2022 was a template notice. It was served to the door and also emailed to the tenant who acknowledged service. Where the tenant identified himself under oath as "████████" and not "████████" as written on the Termination notice and the landlord's application for dispute resolution, I note that the tenant is referred to only as "████████" on the lease to own and the sales document. I also note that neither the tenant made mention of how the tenant is named on the termination notice when it was reviewed during this hearing. The tenant only commented to testify that he acknowledged receiving the notice on the day that it was issued and so I find that the tenant was satisfied that the notice he was served, was a notice to himself and not another person.

27. Consequently, I find that the termination notice issued on 16 October 2022, meets all the requirements set out in this section of the Act, and as it was properly served, it is a valid notice

Summary of Decision

28. The landlord is entitled to the following:

- An order for vacant possession of the rented premises,
- The tenant shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

07 December 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal