

Residential Tenancies Tribunal

Application 2022-0996-NL
2022-1014-NL

Decision 22-0996-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:10 a.m. on 03-January-2023.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1 and tenant2” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
4. The landlord submitted an Authorized Representative form naming, [REDACTED], as his representative; she also attended by teleconference. [REDACTED] will hereinafter be referred to as “landlord’s authorized representative.”

Preliminary Matters

5. The landlord’s authorized representative stated that the rent owed \$1,200.00 at the time of application, has now increased to include December and January’s rent, the amount currently owed is \$3,600.00.

Issues before the Tribunal

6. The tenants are seeking
 - Validity of termination notice

The landlord is seeking

- Rent \$3,600.00
- Vacant possession of rental premises

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 19: Notice where failure to pay rent, Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy, and Section 35: Service of documents.

Issue 1: Rent \$1,300.00

Relevant Submissions

9. The landlord submitted a rental agreement (LL#03) with the application. The landlord said he entered a written term agreement with the tenants from 01-September until 31-August-2023. The tenants moved in on 01-September-2022. They pay \$1,300.00 a month. The rental period is from the 1st day of the month until the last day; rent is due the 1st day of each month. The landlord said that the tenant paid a security deposit of \$900.00 on 19-August-2022 and he is still in possession of the deposit.
10. The landlord submitted a rent ledger (LL#04). The landlord's authorized representative said that the landlord has not received rent from the tenants since the payment on 21-October-2022 and that they still owe for November, December and January rent. The ledger is as follows:

Rent ledger
2022-0996 & 1014-NL

Date	Action	Amount	total
1-Sep-22	Rent owed	1200.00	1200.00
1-Sep-22	payment	-1200.00	0.00
1-Oct-22	Rent owed	1200.00	1200.00
21-Oct-22	payment	-1200.00	0.00
1-Nov-22	Rent owed	1200.00	1200.00
1-Dec-22	Rent owed	1200.00	2400.00
1-Jan-23	rent owed Jan 01- 03	118.35	2518.35

Daily rate \$1,200.00 x 12 months = \$14,400.00 per year

\$14,400.00 divided by 365 days = \$39.45 a day

Jan 01 – 03 = 3 days x \$39.45 = \$118.35

11. As this tribunal doesn't consider future monies owed, the landlord's rent ledger has been amended to reflect rent due up to and including the day of the hearing.

Tenants' Position

12. The tenants also provided their copy of the rental agreement (TT#01). Tenant1 confirms that the agreement is as stated by the landlord.
13. Tenant1 confirms that rent is owed as shown in the rent ledger. She was under the belief that she could hold on to the rent owed until after the hearing.

Analysis

14. Non-payment of rent is a violation of the rental agreement (LL#04). I accept the landlord's testimony and evidence that the tenant did not pay rent totaling \$2,518.35. The tenant does not have the right to withhold rent. There is no dispute regarding the rent owed as tenant1 confirms the landlord's claim.
15. The tenants shall pay the landlord the rent owed totaling \$2,518.35.

Decision

16. The landlord's claim for rent succeeds in the amount of \$2,518.35.

Issue 2: Vacant possession of the rental premises

Issue 3: Validity of termination notice

Landlord's Position

17. The landlord submitted two termination notices (LL#05 & LL#06). The first notice is on a "landlord's notice to terminate early – cause" form for failure to pay rent. The notice is signed and dated for 06-November-2022, with a termination date of 18-November-2022.
18. The landlord's authorized representative said that the landlord emailed the tenants at 6:53 p.m. on 06-November-2022. She said that the landlord made a typing error in the address when he sent the email notification to tenant1 but did send the notification to the correct email to tenant2.
19. The landlord's authorized representative said that the tenants were in rent arrears in excess of 5 days and that the landlord sent the notification in accordance with the service requirements in the *Residential Tenancies Act, 2018*.
20. The second notice (LL#06) served to the tenants by the landlord is on a "landlord's notice to terminate early – cause" form for interference with peaceful enjoyment and reasonable privacy. The landlord served this notice at 11:18 a.m. on 13-November-2022 with a termination date of 19-November-2022.
21. The authorized representative submitted into evidence sworn statements (LL#07) of the upstairs tenants. The landlord and these tenants live upstairs and the tenants, named in this application, rent the downstairs apartment. The sworn statements list concerns such as:
 - Fighting that continues anywhere from 10 minutes to hours
 - The sounds of things being broken
 - The fighting continues multiple times a week
 - In a two week period, at the time of the notice, the upstairs tenants called the police 4 times due to concerns with the violence downstairs

- One of the young female tenants keeps a baseball bat by the door and will not stay at the house alone out of fear of reprisal
 - A family member who dogs sits for the upstairs tenants, now has the dog brought to her home and will not stay at the rental house
 - They called the police because they could hear the female tenant screaming "somebody help me."
 - One of the tenants said that they are afraid that the downstairs tenants will kill one another
22. The landlord lives upstairs with the roommates, he said that he agrees with the sworn statements and that the fighting began in early to mid-October. He said that he has worked from home but can no longer do this because he could be in the middle of a video meeting and fighting could erupt downstairs.
23. The landlord's authorized representative submitted videos of the audio from the ongoing fighting to show the level of violence that the upstairs tenants are hearing. She said that the tenants were told by the police to video tape when they heard fighting. Initially, she submitted tapes from October 29 – November 12 (LL#08 – LL#17).
24. In response to tenant1's claim that the fighting has calmed down, the landlord's authorized representative submitted tapes from December 3 – December 17 (LL#18 – LL#28) to show the ongoing issue.

Tenants' Position

25. Tenant1 confirms receipt of the first notice as stated and as per paragraph 13 confirms that rent was owed.
26. Tenant1 said that they also received the second notice (TT#02) on November 13th as stated by the landlord. She said that they were confused by the second notice.
27. Tenant1 said that they did have some issues with arguing and fighting when they moved in first. She stated that they are receiving counselling for better ways to cope with their issues and that they have not been fighting as much recently.

Analysis

28. The first notice 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.

29. The tenant was not in rent arrears in excess of the 5 days when the notice was created. The notice is signed and sent on the 6th day of the month. The tenants are in rent arrears on the 2nd day of the month, not the 1st, the notice should be sent on the 7th day of the month or after. That being noted, however, the landlord did send the notice electronically after 4:00 p.m. on the 6th day of the month and the notice is therefore not considered served until the 7th which is the relevant date.

Service of documents

35. (6) For the purpose of this section, where a notice or document is sent electronically, it shall be considered to have been served on the day it is sent, if the document is sent by 4 p.m., or the next day that is not a Saturday or holiday, if the document is sent after 4 p.m.

30. On the date that the notice is considered served the tenants are in rent arrears 5 days and the tenants are still in arrears on the date of termination. The termination notice provides the tenants with 10 days' notice and meets the requirements of the Act, this is a valid notice. The landlord however, did give the tenants another notice under Section 24 for interference with peaceful enjoyment. This notice was issued after the first notice with a later termination date; reasonably the tenants would infer that they are now under a different notice and permitted to stay until the new termination date.
31. In consideration of the second notice served to the tenants for interference with peaceful enjoyment; 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.**

32. 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.

33. I accept the testimony of the landlord and the sworn testimony of the upstairs tenants that there has been excessive fighting and noise in the downstairs tenants' apartment. In addition to the testimony the audio tapes carried a great deal of weight in this decision; the fighting in the tapes would be terrifying to witness and would certainly have an impact on the peaceful enjoyment of one's home.
34. The landlord's termination notice is dated for 13-November-2022 with a termination date of 19-November-2022. The landlord served this notice electronically on the 13-November; service on that date does meet the requirement of not less than 5 days' notice; as shown in Section 24, of the *Residential Tenancies Act, 2018*, below:

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.*
35. I find that the downstairs tenants are interfering with the rights of the landlord and upstairs tenants. I therefore find that the notice served by the landlord is a valid notice and was served in accordance with the *Act*. The tenants should have moved by 19-November-2022.
36. The tenant should have vacated the property by 19-November-2022.

Decision

37. The landlord's claim for an order for vacant possession succeeds.
38. The tenants shall vacate the premises immediately.
39. The tenants 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.
40. The tenants shall pay a daily rate for rent beginning 04-January-2023 of \$39.45, as per paragraph 10, until such time as the landlord regains possession of the property.

Summary of Decision

41. The tenants shall:

- Pay the landlord \$2,518.35 for rent owed.
- Pay a daily rate of rent beginning 04-January-2023 of \$39.45, until such time as the landlords regain possession of the property.
- Vacate the property immediately
- 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.

The landlord

- Will be awarded an Order of Possession.

January 6, 2023

Date

[Redacted]
Jacqueline Williams, Adjudicator
Residential Tenancies Office