

Residential Tenancies Tribunal

Applications: 2022 No. 01063 NL

Decision 22-1063-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:03 AM on 25 January 2023 via teleconference.
2. The applicant [REDACTED], hereinafter referred to as "the landlord" participated in the hearing on behalf of his wife, and co-owner of the rental premises, [REDACTED]. The landlord testified that his wife was unable to get out of work, and that he was attending on her behalf.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant" also participated in the hearing.
4. The landlord submitted an affidavit of service confirming that he served the tenant personally on 09 January 2023 with notice of the claim (L#1). The tenant confirmed service.
5. The details of the claim were presented as a fixed term rental agreement that started 01 July 2022. Monthly rent is set at \$600.00 and a security deposit in the amount of \$300.00 was collected. A copy of the written rental agreement was not provided.
6. 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

7. The landlord is seeking an order for 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* (the *Act*).
9. Also relevant and considered in this case are sections 10 and 24 of the *Act*.

Preliminary Matters

10. The rental premises a two apartment dwelling located at [REDACTED] [REDACTED]. The tenant resides in the basement apartment that is accessed from the back of the premises. Other tenants reside in the main floor apartment that is access from the front of the premises. Driveway access is shared between the tenants.

Issue 1: Vacant Possession of Rented Premises

Landlord's Position

11. The landlord submitted a copy of the termination notice issued on 17 November 2022 (L#2). It is a template section 24 notice made available by this tribunal, and it identifies a stated move out date of 30 November 2022. The landlord testified that he issued the notice in person to the tenant on the day that it was issued.
12. The landlord testified that he issued the tenant a notice of interference with peaceful enjoyment because he is unable to keep tenants in the main floor of the rental premises since the tenant took occupancy of the basement unit. He testified that the main floor tenants vacated on 15 December 2022 in response to the basement tenant and referred to an email submitted from them outlining their concerns (L#3). The landlord did not read the contents of this letter into the record.
13. The landlord testified that is also at risk of losing the new tenants in the main floor unit due to the basement tenant. These tenants took occupancy on 01 January 2022 on a month-to-month term. The landlord testified that he at his "wits end" due to the constant communications he receives from the main floor tenants and neighbours of the rental premises regarding their concerns with the basement tenant. He testified that the basement tenant is frequently loud, she has questionable visitors coming and going at all hours, and that she is often "irate" with others.
14. The landlord testified that he has owned the rental premises for 12 years and previously lived in the main floor unit. He testified that he is an experienced landlord having regularly rented out the basement apartment. He testified that he has previously had issues with tenants, but never like this, that he feels like a "babysitter". The landlord expressed concern about the guests the basement

tenant has at the rental premises and testified that the cops have been called to the rental premises at least 6 times since she moved in July 2022.

15. In response to testimony from the tenant, the landlord testified that the former tenant in the main floor unit had to get a peace bond against the basement tenant's boyfriend. The landlord also testified, in response to a comment from the basement tenant, that she forgot to mention the cops were called by the main floor tenant because a visitor of the basement tenant damaged their vehicle and allegedly attempted to flee the scene.

Tenant's Position

16. The tenant acknowledged receipt of the 17 November termination notice but denied disrupting the peaceful enjoyment of either the main floor tenants or the landlords. She testified that the landlords are nice people, that she herself does not do drugs or drink alcohol. The tenant stated that she does not have a car and that her unit does not have laundry, so she has various people visit to help her get around. However, she denied that these people come and go at all hours and testified, that it is her "own business" who she has over. The tenant testified that she is quiet, that her friends call her "grandma" and that she often goes to bed early.
17. The tenant testified that she is respectful in her interactions with the other tenants in the rental premises and denied knowing that she was the cause of their vacating. The tenant testified that she was respectful in her communications with the neighbour and that she had only approached them because she was concerned they were blowing snow in front of her living room window which is a fire safety hazard.
18. The tenant testified that she called the cops early in her tenancy because her teenage daughter, who was attending the rental premises was being disruptive and needed to be taught a lesson. The tenant testified that her daughter now lives elsewhere. The tenant also acknowledged a prior incident with the landlords that occurred when she was hosting a cat, which was contrary to her rental agreement as well as an interaction that occurred in the driveway.

Analysis

19. 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 the tenant 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.
20. 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.

21. In addition to the above, a termination notice issued under section 24 of the Act must satisfy section 34 of the Act, which reads as follows:

Requirements for notices

34. A notice under this Act shall

- (a) *be in writing in the form prescribed by the minister;*
 - (b) *contain the name and address of the recipient;*
 - (c) *identify the residential premises for which the notice is given; and*
 - (d) *state the section of this Act under which the notice is given.*
22. Regarding the termination notice that was issued on 17 November 2022, I find that it was properly completed and properly served to the tenant. I also noted that the tenant acknowledged service of the termination notice instead.
23. Regarding the landlord's reason and justification for issuance of the termination notice, I accept his testimony that the main floor tenants of the rental premises vacated because of the basement tenant. I also accept his testimony that the current tenants are contacting him regularly with their own concerns about the basement tenant. I further accept that the landlord is being contacted by neighbours of the rental premises regarding the basement tenant. Consequently, I accept the landlord's testimony that he is a "baby sitter" and that such a designation, represents interference in his rights as a landlord to peacefully operate the rental premises. Typical tenant conduct does not and should not require regular oversight by the landlords.
24. I also accept that the tenant disputed each and every one of the landlord's claims. However, I did not find her testimony sufficiently convincing as they did not at any time cause me to doubt the validity of any of the landlord's complaints. For instance, when she relayed an incident with the former tenants of the main floor, she failed to mention that the main floor tenants' vehicle was damaged by a guest of hers. Additionally, where the tenant testified that it is her business who comes and goes to her rental premises, it is also her business to ensure that

guests to her rental premises do not disturb the peaceful enjoyment of other tenants, or the landlord in accordance with 10(1)(7)(a) of the Act.

25. As such, I find that landlord successfully established on the balance of probabilities that the actions of the basement tenant and her guests have repeatedly and unreasonably interfered with his own peaceful enjoyment as a landlord, as well as the peaceful enjoyment of the other tenants and neighbours of the rental premises. Consequently, I find that the landlord was justified in issuing the tenant a section 24 termination notice on 17 November 2022. Because this notice was also properly completed and validly served as is noted in paragraph 22, I find the termination notice was valid.

Decision

26. The landlord's claim for an order for vacant possession of the rented premises succeeds.
27. The tenant shall pay to the landlord 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.

26 January 2023

Date


Jaclyn Casler
Residential Tenancies Tribunal