

Residential Tenancies Tribunal

Applications: 2022 No. 1077 NL

Decision 22-1077-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 2:04 PM on 09 February 2023 via teleconference. It was continued 2:31 PM on 10 February 2023.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. As did the respondent, [REDACTED], hereinafter referred to as the tenant. The respondent was represented by [REDACTED], hereinafter referred to as “the tenant’s representative”.
3. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served by email on 27 January 2023 to [REDACTED]. Proof of email service was provided (L#2) and the landlord testified that this email address was provided by the tenant on the written rental agreement (L#3). The tenant indicated that she has been having trouble with her email but acknowledged the email address as her personal email.
4. The details of the claim were presented as a month-to-month rental agreement that started 01 April 2021. Monthly rent is set at \$750.00 and paid for on the tenant’s behalf by AES. The landlord and tenant initially disagreed on whether or not a security deposit in the amount of \$372.00 was collected.
5. 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

6. The landlord is seeking the following:
 - Compensation for Damages in the amount of \$4,950.00;
 - An order for Vacant Possession.

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* (the *Act*).
8. Also relevant and considered in this case are sections 10, 19 and 22 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

9. The rental premises is a two apartment building located at [REDACTED]. The tenant resides in the lower unit (A) and the main floor unit is rented separately. The landlord withdrew his claim for compensation for damages and stated that he will refile at a separate date after he regains possession of the rental premises.
10. The parties disputed whether or not the landlord was entitled to ½ rent (e.g., \$375.00) for the first month of the tenancy, or whether he was still waiting for payment of the tenant's security deposit (e.g., \$372.00). The hearing was continued on a second date to allow time for both parties to submit relevant evidence from the tenant's provider of rent. The landlord submitted documentary evidence on 10 February 2023 from the tenant's income support provider confirming that AES provided only ½ rent (e.g., \$375.00) towards the tenant's first month's rent at the rental premises (L#4).

Issue 1: Vacant Possession

Relevant Submissions

11. The landlord submitted a copy of a termination notice that was served in person to the tenant on the day that it was issued, 03 November 2022 (L#5). The stated move out is 15 November 2022. The notice is a standard template termination notice made available by this office, and it was issued under the following authority:
 - Section 19 Failure to pay rent
 - Section 22 Failure to keep the premises clean and repair damages
 - Section 24 Interference with peaceful enjoyment and reasonable privacy
12. Each of these reasons for issuance were reviewed during the hearing.

Termination Reason # 1 - Failure to Pay Rent (Section 19)

Landlord's Position

13. The landlord testified that the tenant owed \$275.00 in rent as a result of her only making partial payments towards the ½ rent for April 2021 (e.g., \$375.00) not paid by AES, as noted in paragraph 10. The landlord testified that the tenant was to have paid these arrears in \$50.00 increments and submitted text messages between himself and the tenant in support of this arrangement (L#6). The landlord also called a witness, [REDACTED] to provide additional evidence related to the tenant's rental arrears. [REDACTED] testified that he looks after properties for the landlord and that he attempted on multiple occasions to collect outstanding rent from the tenant. [REDACTED] also testified that he did not at any point refuse payment from the tenant.

Tenant's Position

14. The tenant and her representative initially testified that the only money owed to the landlord, was the security deposit. After then checking in with their AES representative, the tenant and her representative agreed that the tenant still owes the landlord for the remainder of rent not paid by AES for that first month. The tenant's representative testified that the tenant tried to pay the landlord/property manager on multiple occasions between August and November 2022 but payment was refused. The tenant's representative asked, why is the tenant being evicted now for \$200 that has been owing since April 2021.

Analysis - Failure to Pay Rent (Section 19)

15. Section 19 of the *Residential Tenancies Act, 2018* 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.

(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

16. Regarding the timeliness of this termination notice, and any implication for the landlord's serving for arrears when arrears had previously existed for more than a year (e.g., since April 2021), I accept that arrears remained on the tenant's account for that duration. According to the landlord's records, on 03 November 2022, the day the termination notice was issued under section 19 of the *Act*, the tenant was in arrears in the amount of \$275.00. As the notice meets all the requirements set out in this section of the *Act*, and as it was properly served, it is a valid notice.

Termination Reason # 2 - Failure to Keep Premises Clean and Repair Damages (section 22)

Relevant Submissions

17. This reason for termination was not considered in depth because the landlord failed to establish on the balance of probabilities that he followed the necessary service procedures required for terminating a tenancy under this section of the *Act*. In particular, I note that the landlord's written request for repairs was served to the tenant on the same day the termination notice was issued. A copy of the request for repairs dated 03 November 2022 was submitted (L#7).

Termination Reason # 3 - Interference with peaceful enjoyment and reasonable privacy (Section 24)

Landlord's Position

18. The landlord testified that he has been receiving complaints about the tenant from neighbours since summer 2021, soon after she first took occupancy. He submitted an email received from a single neighbour as an example, and testified that multiple such complaints from neighbours, all unrelated to him, have been received during the tenant's occupancy in the rental premises (L#8). The landlord also testified that he attempted multiple times to address these concerns with the tenant, and that things would quiet down for a while and start back up again. He submitted proof of his text messages with the tenant regarding his concerns with complaints being received regarding excessive noise late at night (L#9). The landlord testified that he lost the main floor tenants because of their concerns with the tenant and that he has been unable to rent the main floor unit since. The landlord also referred to a video submitted of a dog barking, heard from the window of the rental premises (L#10).
19. The landlord called his father as a witness, [REDACTED]. [REDACTED] testified that the current condition of the rental premises is considerably worse than it was prior to the tenant taking occupancy. The example of a broken window was mentioned. [REDACTED] also testified that the tenant acknowledged reported

damage and that she committed to addressing the requested repairs. The landlord testified that the RNC have attended the rental premises on multiple occasions as a result of the tenant, and submitted to an RNC incident report from 12 January 2023 (L#11).

Tenant's Position

20. The tenant denied knowledge of complaints from others regarding her and asked how it was that the landlord was emailed by his neighbours. The tenant acknowledged hosting a dog occasionally, as the dog is owned by her boyfriend. The tenant's representative testified that the tenant denied any and all claims of damage being caused by her when she met with the landlord and his father in August 2022. The tenant's representative also testified that the windows in the rental premises are rotting out and none of them work properly, and that the tenant was friends with the main floor tenants. He testified further that the main floor tenants allegedly vacated the rental premises because the landlord was upset about damages to the rental premises. The tenant's representative asked why the landlord continues to harass the tenant.

Analysis – Interference (Section 24)

21. 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.
22. 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.
23. According to the landlord's testimony, he has continued to receive multiple complaints from neighbours regarding the tenant and he also lost the tenants on the main floor. He testified further, that he has been unable to rent the main floor unit since as a result of the tenant's continued occupancy in the premises. Additionally, the landlord convincingly established that he has attempted on multiple occasions to communicate with and even sit down and meet with the tenant to inform her of his concerns (e.g., the complaints from others). Where the tenant and her representative denied such testimony, I accept that the landlord

informed the tenant on multiple occasions of his concerns. I was able to verify the landlord's communication of these concerns as well by reviewing the evidence of text messages between the landlord and tenant.

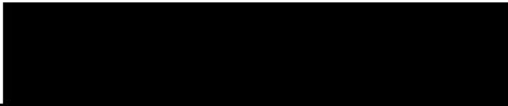
24. Additionally, I accept the landlord's evidence and witness testimony regarding efforts to have the tenant address required repairs in the rental premises. I accept the requirement for such continued efforts by the landlord is a persistent interference against his right to otherwise peacefully operate his rental premises.
25. Consequently, I accept on the balance of probabilities that the tenant repeatedly contravened condition 7(a) Peaceful Enjoyment and Reasonable Privacy (section 10(1) of the *Act*). I therefore accept that the landlord's reason for issuing the tenant a termination notice under section 24 of the *Act* on 03 November 2022 was valid and because this notice was also validly served to the tenant, I find that it is a valid termination notice.

Decision – Vacant Possession

26. The termination notice served on 03 November 2022 under sections 19 and 24 of the *Act* is a valid notice.
27. The landlord's claim for an order for vacant possession of the rented premises succeeds.
28. 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.

21 February 2023

Date


Jaclyn Casler
Residential Tenancies Tribunal