

Residential Tenancies Tribunal

Applications: 2022 No. 0272 NL

Decision 22-0272-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:32AM on 12 July 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “landlord1”, participated in the hearing.
3. The applicant’s wife, [REDACTED], hereinafter referred to as “landlord2” also participated in the hearing.
4. The respondent, [REDACTED], hereinafter referred to as “the tenant”, participated in the hearing.
5. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served of the claim against him. A review of the tracking number provided indicated that package was picked up on 03 June 2022, confirming good service.
6. The details of the claim were presented as a month-to-month rental agreement with rent set at \$675.00 and paid on the tenant’s behalf by Central Health and AES. Landlord1 acknowledged receiving a security deposit of \$475.00 from the previous homeowner, and receipt of this is noted in the copy of the written rental agreement that was provided (L#2).
7. 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

8. The landlord is seeking an order of vacant possession.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
10. Also relevant and considered in this case are section 24 of the *Act* and *Residential Tenancies Policy 7-005 Interference with Peaceful Enjoyment and Reasonable Privacy*.

Preliminary Matters

11. The landlords became landlords when they purchased the house located at [REDACTED]. They purchased the house in fall 2020 and the tenant has been residing in the attached suite since early 2018.
12. The landlords live with their high needs [REDACTED] year old son (full time) and 8 year old son (half time). The house is said to be approximately 1,400 square feet with the rental suite attached on the side of the house.
13. Landlord1 testified that he has been attempting to pursue an order of vacant possession since 06 April 2022 when he made his application to this tribunal. His original hearing date of 25 May 2022 was postponed after he failed to submit the required affidavit of service to the adjudicator assigned at the time.

Issue 1: Vacant Possession of Rented Premises

Landlord's Position

14. Landlord1 testified that his house was not built to accommodate two purpose built units and highlighted how there is only a single hot water tank. Landlord1 testified that this means his wife has issues every morning when trying to get ready for work because her shower always goes cold due to the tenant flushing his toilet.
15. Landlord1 testified that he is really bothered by the frequent sounds of pornography that he regularly hears from the tenant's unit.
16. Landlord1 testified that he provided the tenant with a written letter of his concerns in December 2021 in an effort to be friendly and encourage him to find an alternative living arrangements. Then in February 2022 when the tenant had not yet moved, landlord1 provided the tenant with a written document to sign declaring that the tenant would vacate the rental premises by 31 March 2022 (L#3).

17. Then when the tenant did not vacate the rental premises, landlord1 issued him a section 24 termination notice on 02 April 2022 (L# 4). The stated move out date was 08 April 2022 and the notice was served in person to the tenant.
18. Landlord1 testified that he just wants the tenant out and because he is not out yet, landlord1 no longer feels comfortable in his home. Landlord1 even testified that he avoids coming home after work and will go driving instead because he does not want to encounter the tenant. I noted that landlord1's affect was affect was dull and defeated throughout the hearing.
19. Landlord2 testified that she is a [REDACTED] who is used to dealing with the public and that she has good communication skills. She testified that the tenant makes her uncomfortable and interferes with her family's daily living. She provided a number of examples including the following:
 - The tenant answered the door with pornography clearly playing on the TV in his unit after she knocked to seek clarity on an issue he had reported with his kitchen taps;
 - Neighbours have complained about the tenant's lack of appropriate clothing (robe only) when smoking in the doorway of his unit;
 - Neighbours also complained about the tenant pushing snow into other yards prompting a visit from the municipal police;
 - The tenant smoking in the doorway of his unit, making his unit smell of smoke and also making her [REDACTED] old son's room smell like smoke despite a non-smoking clause in his rental agreement;
 - The tenant makes "weird" observations regarding her vehicles, such as asking if the car is "still under warranty" and or if landlord1's motorcycle has any issues making her think that he has tampered with her vehicles;
 - The tenant watches porn at high volumes, making it obvious to everyone outside of his unit that he is watching porn;
 - The tenant watches her and makes her uncomfortable whenever she is in her back yard and so she can no longer peacefully enjoy her backyard.
20. Landlord2 testified that they have been attempting to work peacefully and respectfully with the tenant to have him move out and maybe move in with his parents. However, they have been trying to encourage him to move since Christmas 2021 and yet he is still in the rental unit. The landlords both stated that they just want to get on with their lives.

Tenant's Position

21. The tenant testified that he acknowledged receiving communications from landlord1 since fall of 2021 encouraging him to find housing elsewhere. The tenant testified that his father is not doing well.
22. The tenant acknowledged that his landlords want him to leave and that he needs to get his act together and leave. The tenant offered to leave by 31 August 2022 if landlord1 would return a portion of the security deposit.

23. The tenant acknowledged that he smokes and testified that he does not smoke in the unit, but that he smokes in the door. He stated that he smokes between 12 – 15 cigarettes a day. The tenant testified that he does not work and that he goes for walks and he shops, but is otherwise home. The tenant acknowledged that he watches porn but denied that he watches it at high volumes.
24. The tenant testified that he tries to be a good tenant by staying out of the way, but that he acknowledged the landlords' feel differently. The tenant testified that he always keeps his blinds down and that the landlords only know that he is watching porn because they keep their ears to the bedroom of the rental unit. Landlord2 strongly denied this claim. The tenant testified that he would make changes if the landlords asked him to make changes.

Analysis

25. 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.
26. 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.
27. 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.


28. Both landlord1 and landlord2 were clear and consistent in their testimony that the tenant and his lifestyle is not compatible with their family home, especially one that has an ■ year old boy present throughout the summer and a high needs ■ son present year round. Both landlord1 and landlord2 also established on the balance of probabilities that they have attempted to provide tenant with time he needed to make alternative living arrangements. However, the tenant has not moved and the landlords are no longer able to live in their home and raise their children without the unreasonable and persistent interference of the tenant. Multiple compelling examples of such interference were provided in paragraph 19.
29. In sum, I find that the termination notice 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

30. 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.

13 July 2022

Date


Jaclyn Casler
Residential Tenancies Board