

Residential Tenancies Tribunal

Applications: 2023 No. 0126 NL

Decision 23-0126-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 1:14PM on 07 March 2023 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the tenant”, also participated. He was supported by [REDACTED], supportive housing worker, hereinafter referred to as “the tenant’s representative”.
3. An affidavit of service was provided by the landlord (L#1) confirming that he served the tenant in person at his door on 21 February 2023. The tenant confirmed service.
4. The details of the claim were presented as a fixed term 12 month rental agreement signed on 18 April 2022 (L#2). Monthly rent is set at \$585.00 and paid on the tenant’s behalf by government. A security deposit was not collected.
5. In a proceeding under the *Residential Tenancies Act, 2018*, 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 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 and 24 of the *Act*.

Preliminary Matters

9. I asked questions of the landlord to confirm jurisdiction of this tribunal. From these questions and follow up discussion with the Deputy Director of Residential Tenancies, I am satisfied that I had jurisdiction to proceed with this application.

Issue 1: Vacant Possession of Rented Premises

Landlord's Positions

10. The rental premises is a multi-unit apartment located at [REDACTED]. The tenant resides in apartment [REDACTED].
11. The landlord provided an exhibit list that was submitted (L#3) and testified there have been two main categories of issues with the tenant:
 - The tenant has repeatedly smoked within the premises despite it being a non-smoking building.
 - The tenant has acted aggressively towards the workers as well as inconsiderately to fellow tenants.
12. Specific to concerns with smoking, the landlord testified that the tenant has repeatedly smoked in his unit resulting in smoke entering the hallways, bothering workers and tenants. The landlord testified to the following timeline:
 - There was an initial incident on 17 August 2022 which prompted a warning letter to be sent to the tenant.
 - There was a second incident on 08 November 2022 which prompted a second letter to be sent to the tenant.
13. Specific to the incidents where workers felt their safety was at risk, the landlord testified to the following:
 - On 27 October 2022 the tenant was aggressive to staff who were only attempting to distribute required medications to the tenant;
 - On 30 November 2022, workers discovered that the tenant was present in another tenant's room and that the tenant in this dispute had soiled himself;
 - On 10 December 2022, the tenant yelled for support from his doorway and continued to act aggressively towards the staff who were attempting to provide support to the tenant but feared for their safety.

14. The landlord testified that a section 24 termination notice was issued to the tenant in person on 18 January 2023 because he was instructed to do so by the landlord's Supportive Housing Committee. The standard termination notice template made available by this tribunal was used, and a copy of the notice issued was provided (L#4). The stated move out date on this notice is 02 February 2023.

Tenant's Position

15. The tenant remained quiet through the proceedings. He answered questions when asked. He acknowledged listening to the landlord's timeline of events, and testified that "some things were true and some were false". He also stated that some of the workers are "arseholes". However, he did not elaborate on either statement.
16. The tenant's representative testified that the landlord's presentation of events was accurate and that disturbances are ongoing.

Analysis

17. 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.
18. 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.
19. As identified in paragraph 11, the tenant has repeatedly smoked in the premises (which is non-smoking) and repeatedly acted in ways that interfere with other tenants. According to the landlord, the tenant has also repeatedly caused employees of the landlord to fear for personal safety. Consequently, I find that the landlord was justified in issuing the tenant a termination notice under section 24 of the Act as he clearly established on the balance of probabilities that the tenant has failed to uphold his own obligations under the Act (section 10(1) 7(a)).

20. In addition to reason for service, 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.

21. 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

Summary of Decision

22. 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.

08 March 2023

Date


Jaclyn Casler
Residential Tenancies Tribunal