

Residential Tenancies Tribunal

Applications: 2023 No. 0197 NL

Decision 23-0197-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:06 AM on 03 April 2023 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2" participated in the hearing, as did the respondent, [REDACTED], hereinafter referred to as "the tenant".
3. An affidavit of service was provided by landlord1 confirming that the tenant was served by email of the claim against her on 23 March 2023 (L#1). Proof of service was provided (L#2) and the tenant acknowledged service.
4. The details of the claim were presented as an originally fixed term rental agreement that officially started December 2020 and is now month-to-month (L#3). Monthly rent is \$750.00, paid on the tenant's behalf by government, and a security deposit in the amount of \$562.50 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 landlords are 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. The rental premises is a basement suite of a household located at [REDACTED] [REDACTED]. The landlords reside in the main floor unit.

Issue 1: Vacant Possession of Rented Premises

Landlords' Position

10. Landlord1 testified that the tenant was initially served a termination notice in February 2022 requiring that she vacate 31 March 2023. However, after serving this notice to the tenants' door, landlord1 testified that disruptions (screaming and fighting) from the tenant continued causing him to issue a new termination notice on 01 March 2023 (L#4). This new notice is a template notice issued under section 24 of the *Act*, interference with peaceful enjoyment and reasonable privacy. It was served by email and identified a stated move out date of 07 March 2023.
11. Landlord1 referred to a sworn affidavit and testified that he issued the 01 March 2023 termination notice after things escalated and the stress became too much for him and his wife. Landlord1 emphasized that he and wife are not used to the violence of the tenant. He testified that he issued the termination notice in response to the regular screaming and yelling and fights from the tenants unit that are disruptive and stressful for him and his wife, especially with the regular police attendance that results from this violence.
12. Landlord2 testified in tears that she is always worried for the tenant and that her heart rate starts pounding when she hears the yelling and screaming from the tenant's unit. Landlord1 emphasized that he and his wife are elderly and both suffer health problems that are worsened by the stress of living above the tenant. Landlord1 testified that he has been particularly concerned for their safety since receiving what he perceived as a threatening note from the tenant on 03 March 2023 implying that their house was going to catch fire.
13. Landlord1 testified that the tenant is a small woman but he is afraid of her because he has seen her chase men twice her size with a knife. When asked if he had any follow up to the tenant's claims, landlord1 testified that her claims are either false or fabrication. He testified that he and his wife initially tried to help the tenant, but they stopped once the tenant allowed her boyfriend to move back in and disturbances involving regular police attendance at the premises, increased.

Tenant's Position

14. The tenant testified that she received this termination notice by email but never read it because of storage issues with her phone. She stated that receiving this notice caused her to stay at the Waterford hospital because her mental health is "not great". Regarding the police attending to her premises, the tenant testified that they are conducting welfare checks on her person. The tenant acknowledged that her boyfriend is residing with her again and denied this was an issue.
15. Of note, is that the tenant was disruptive throughout the hearing. She started crying at one point before leaving the call. We waited for her to return before continuing the proceedings. The tenant then continued to interrupt landlord1 while he was speaking and refused to stay on mute when others were speaking. The tenant also made assorted sexual accusations about the landlord and his son. Additionally, she repeatedly expressed dismay at the demise of a once positive relationship between the landlords and herself.

Analysis

16. 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.
17. 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.
18. In addition to the testimony received during the hearing, I reviewed the sworn affidavit submitted by landlord1 and note the following (see page 4 in L#5):

"As best as I can recall, the police have been here 18 times since the beginning of October 2022. Several neighbours have expressed their concern with the disruptive noises and frequent presence of police at her door. Her activities are casting the neighbourhood in a negative light".

19. I also refer back to the tearful testimony of landlord2 where she expressed her concern for the safety of the tenant while also expressing her dismay for the demise of a once positive relationship. Related to this, I accept that the landlords issued the tenant with a section 24 notice in response to well documented trend of unreasonable interruptions to their privacy and peaceful enjoyment resulting from the tenant's acknowledged co-habitation with a second party (e.g., the boyfriend). Consequently, I find that the notice issued on 01 March 2023 was issued for a valid reason. Regarding other requirements for service and issuance of the notice itself, I find that the notice was also properly completed and validly served.

Summary of Decision

20. The landlords are 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.

05 April 2023

Date

Jaclyn Casler
Residential Tenancies Tribunal