

Residential Tenancies Tribunal

Application 2023-0358-NL

Decision 23-0358-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 11:01 a.m. on 11-May-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, participated in the hearing. [REDACTED], support for the tenant was also present. [REDACTED] [REDACTED], hereinafter referred to as “the landlord”, was represented by [REDACTED]. All parties attended via teleconference.

Preliminary Matters

3. The landlord had a witness that he wanted to call into the hearing however a witness list was never submitted to the Residential Tenancies Office or given to the applicant in advance of the hearing. This request was denied.
4. The rental unit is an apartment located in an apartment building. The tenant was residing there when the landlord took over the building in 2020. There is no written rental agreement, only a verbal month to month agreement that commenced in 2020. Rent is \$650.00 per month. A security deposit of \$375.000 was paid to the original landlord in April 2019 and is in the possession of the landlord.
5. The tenant did not submit an affidavit and could not confirm the exact date that he served the landlord with notification of the hearing. The landlord confirmed that his staff received the documents on 26-April-2023. In accordance with the *Residential Tenancies Act, 2018* this is good service.

Issues before the Tribunal

6. The tenant is seeking:
 - A determination of the validity of a termination notice issued to him on 27-March-2023 under section 24 of the *Act*

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*.
8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10 and Section 24.

Issue 1: Validity of Termination Notice

Relevant Submissions

9. The tenant submitted a copy of a termination notice issued to him on a *Landlord's Notice to Terminate Early – Cause* form (TT#1). It was dated for 27-March-2023 under section 24; Notice where tenant contravenes peaceful enjoyment and reasonable privacy to vacate the premises by 30-April-2023.

Landlord's Position

10. The landlord states that there are 2 issues that are ongoing with the tenant. Issue # 1: Smoking in the back doorway of the apartment building and Issue # 2: Company that the tenant frequently brings into the unit that disrupts the peaceful enjoyment and reasonable privacy of the other tenants in the apartment building.
11. Issue # 1. The landlord states that the tenant smokes in the back doorway, holding the door open with his hand or using a rock to keep the door open while he is smoking. This smoke is coming back into the hallway where other tenants are located and causing a smell in that area. The landlord feels that this is interfering with the peaceful enjoyment of other tenants while walking in the hallway.
12. Issue # 2. The landlord states that the tenant has been bringing company around the building and within his unit whom the landlord refers to as bad news. The landlord states that this person frequently resides at the tenant's residence, brings other people to the area and has been seen around the building smoking cannabis. The landlord says that both the apartment building and surrounding grounds are cannabis free areas. The sight and smell of cannabis is interfering with the peaceful enjoyment and reasonable privacy of the other tenants.

Tenant's Position

13. Issue # 1. The tenant states that he is a smoker and had used the back entrance to smoke in the past but when he was told that he could not smoke in the back door entrance any longer, he moved to the designated smoking area out back by the picnic table.
14. Issue # 2. The tenant states that the company that he brings around is trouble. He states that he asked him to stay away for a few months. He acknowledges that his person now has other friends within the apartment building and doesn't necessarily come around to hang out in his residence. The tenant stated that he told the landlord in April that this person will not be coming around anymore.

Analysis

15. Issue # 1. I accept the landlord's testimony that the tenant smokes in the back doorway and that this does indeed interfere with the peaceful enjoyment of other tenants especially when walking through the hall way area. The tenant stated that he do not smoke in that area any longer and moved to a designated smoking area once advised by staff to do so. The landlord has failed to provide adequate evidence to substantiate his claim that the tenant continues to smoke in the doorway of the building and as such this does not meet the required test under section 24. For this reason, issue # 1; smoking in the doorway is not a valid reason to terminate the tenancy under section 24 of the *Act*.
16. Issue # 2. I accept the landlord's testimony that the company that the tenant brings around and whom frequently resides at the tenant's residence is trouble and smokes cannabis in the areas designated as cannabis free areas. The landlord did not have any evidence to support his claim that this person is smoking cannabis in the area however, the tenant agreed that this person is trouble and that he does indeed smoke cannabis on the premises. The tenant stated that he asked this person to stop coming around and advised the landlord in April that he would not be around any longer. The tenant also stated that despite him asking this person to stop coming around, he continued to come around anyways and acknowledges that he now has other friends in the building and is not necessarily visiting him. I asked the tenant when was the last time that this person was at the premises and the tenant stated 3 days ago. I also asked the tenant when was the last time that this person was inside his apartment and the tenant replied that he was there on May 4, 2023. I find that the tenant is the reason this person is hanging out on the premises and this person's lack of respect for the cannabis rules is interfering with the peaceful enjoyment of the other tenants. The tenant is responsible for the actions of the people he brings onto the premises and for this reason, I find that issue # 2 is a valid reason to terminate the tenancy under section 24 of the *Act*.
17. The relevant subsections of section 10 of the *Residential Tenancies Act, 2018* state:
 - i. **Statutory conditions**
 - ii. **10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:**
 - iii. ...
 - iv. **2. Obligation of the Tenant - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.**

7. Peaceful Enjoyment and Reasonable Privacy -

(a) The tenant shall not unreasonably interfere 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. The notice was served under Section 24, of the *Residential Tenancies Act, 2018*, which states:

24. *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.

19. The tenant was given a termination notice on 27-March-2023 to vacate the premises on 30-April-2023. This meets the timeline of "not less than 5 days after the notice has been served" as set out in section 24 of the *Act*. The termination notice meets the requirements of the *Act* and is a valid notice.

Decision

20. I find that the termination notice with cause issued on 27-March-2023 under section 24 of the *Act* is a valid notice.

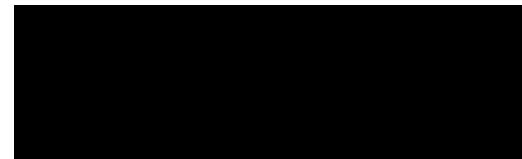
21. I find that the tenant should have vacated the premises by 30-April-2023.

Summary of Decision:

22. The termination notice issued on 27-March-2023 under section 24 of the *Act* is a valid notice.

May 12, 2023

Date


Pamela Pennell, Adjudicator