

Residential Tenancies Tribunal

Application 2023-0387-NL

Decision 23-0387-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 11:07 a.m. on 1-June-2023.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord", participated in the hearing. The respondent, [REDACTED] hereinafter referred to as "the tenant", did not participate in the hearing. The hearing was held via teleconference.

Preliminary Matters

3. The tenant was not present or represented at the hearing and I was unable to reach her by telephone as the telephone number provided was no longer in service.
4. The rental unit is the basement apartment of the landlord's residence. There is a written month to month rental agreement that commenced on 1-August-2019 (LL#1). Rent is \$825.00 per month and is subsidized by NL Housing and AES. A security deposit of \$550.00 was paid on 1-August-2019 and is in the possession of the landlord.
5. The landlord submitted an affidavit stating she served the tenant with the notice of hearing on 16-May-2023 via electronically by sending it through Facebook Messenger. The landlord provided proof of the delivery in picture form showing a conversation between herself and the tenant whereby the tenant acknowledges receipt of the document (LL#2). This is good service.
6. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as she has been properly served. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

Issues before the Tribunal

7. The landlord is seeking:
 - Vacant possession of rental premises

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, and Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy.

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

10. The landlord submitted a copy of a termination notice issued to the tenant on a *Landlord's Notice to Terminate Early – Cause* form (LL#3). It was dated for 19-April-2023 under section 24; Notice where tenant contravenes peaceful enjoyment and reasonable privacy to vacate the premises by 26-April-2023.

Landlord's Position

11. The landlord states that over the past year things have changed with her tenant's mental health which has created a lot of disruption to the lives of her family. Since May-2022, the tenant has become very verbally abusive towards her and her family members and sometime during the first week of January-2023 the landlord experienced a physical altercation with the tenant. The tenant walked up onto the landlord's deck and pushed her. The landlord escaped to the interior of the home and locked the door.
12. The landlord testified that she continuously hears loud noises from the basement apartment, including screaming, cursing, throwing objects around the unit and breaking things.
13. The landlord testified that about 2 weeks ago, the tenant had returned home from the hospital and engaged the landlord stating that this was her property now and that the landlord had to leave. The landlord stated that this behavior made her feel very uncomfortable.
14. The landlord testified that the Police are continuously visiting the premises and in 1 week they arrived approximately 12 times. The landlord stated that she does not call the Police, but rather the calls are generated from either the tenant herself or her mother seeking a wellness check.

Analysis

15. The relevant subsections of section 10 of the *Residential Tenancies Act, 2018* state:

Statutory conditions

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:

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.

16. 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.

17. The tenant was given a termination notice on 19-March-2023 to vacate the premises on 26-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.

18. I accept the landlord's testimony that all the events listed above interfere with the peaceful enjoyment and reasonable privacy of the landlord and her family members residing in the upstairs unit of the home. The tenant was not available to dispute any testimony from the landlord. I find that the tenant did not meet her obligations as set out in the Act under sections 10 and 24.

19. I find that the tenant should have vacated the unit on 26-April-2023

Decision

20. The landlords claim for vacant possession succeeds.

Summary of Decision:

21. The termination notice issued on 19-April-2023 under section 24 of the Act is a valid notice.
22. The tenant shall vacate the premises immediately.
23. 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.
24. The landlord will be awarded an Order of Possession.

June 6, 2023

Date

Pamela Pennell, Adjudicator
Residential Tenancies Office