



Residential Tenancies Tribunal

Application 2023-0426-NL

Decision 23-0426-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:14 a.m. on 23-May-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.
3. [REDACTED] was called as a witness for the landlord.

Preliminary Matters

4. I tried to reach the tenant via telephone but not answer. I was unable to leave a message as her voicemail was full.
5. The rental unit is an apartment building whereby the tenant resides on the third floor. There is a written month to month rental agreement that commenced on 9-November-2009. Rent is \$885.00 per month and is due on the first of the month. A security deposit of \$458.25 was paid on 4-December-2009 and is in the possession of the landlord.

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6. The landlord submitted an affidavit stating that she served the landlord the notice of hearing on 8-May-2023 electronically by sending it via email to: [REDACTED] (LL#1). The landlord submitted confirmation that the email was successfully sent.
7. 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. In accordance with the *Residential Tenancies Act, 2018* this is good service.

Issues before the Tribunal

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

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*.
10. 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

11. The landlord submitted a copy of a termination notice issued to the tenant on a *Landord's Notice to Terminate Early – Cause* form (LL#2). It was dated for 2-May-2023 under section 24; Notice where tenant contravenes peaceful enjoyment and reasonable privacy to vacate the premises by 8-May-2023.

Landlord's Position

12. The landlord states that she has received several complaints from her resident manager and other tenants in the apartment building regarding interference with their peaceful enjoyment and privacy due to disturbing behavior of the tenant. The landlord states that this behavior ranges from throwing garbage bags in the stairwell, throwing large plastic containers over her balcony on the third floor to the ground below, inserting unwrapped chocolate bars inside the heaters in the hallways, to running up and down the hallways and barricading herself inside her unit causing repeat visits from Police to the premises.
13. The landlord called a witness, the resident manager, whom she stated could speak more to the specific events that took place. The resident manager testified that on 25-April-2023 he noticed a garbage bag near the exit that had been thrown into the stairwell, he investigated by reviewing the camera footage of that area. He testified that it was visible to him that the person leaving the garbage around the exit was the tenant.

14. The witness testified that he had a complaint from another resident on the third floor stating that she saw a storage container being flung from a third floor balcony containing a range of items including clothing and food items. This resident told him that she feared that the container was going to hit her balcony and veer into her window. The resident manager states that he is confident that the container belonged to the tenant as he saw her with the same container a few days prior to this event. The landlord testified that residents walk past the grassy area where the container landed to go to the dumpster and it is also a common area where the 9 children who reside at the premises congregate to play.
15. The witness testified that a tenant in another unit on the fourth floor contacted him out of a safety concern when she witnessed the tenant stuffing unwrapped chocolate bars inside the heaters in the hallway of the building.
16. The witness testified that a resident in another unit on the fourth floor contacted him at 5:51pm on 29-April-2023 with concerns regarding the tenant running in the halls mumbling and laughing.
17. The landlord testified that the Police had to be called on several occasions for wellness checks and on 28-April-2023, the tenant had barricaded herself inside the premises which resulted in the Police arriving at 10:23pm. The Police were concerned for her safety and could smell something from inside the unit. The Police had to force the door open to access the unit. The landlord submitted a picture of the damaged door once the Police accessed the unit (LL#3). Other tenants, including children witnessed this event which the landlord states made everyone feel very uneasy.

Analysis

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

- i. **Statutory conditions**
- ii.
- iii. **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.

19. 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

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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.

20. The tenant was given a termination notice on 2-May-2023 to vacate the premises on 8-May-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.

21. I accept the landlord's testimony and the testimony of her witness, the resident manager that all the events listed above interfere with the peaceful enjoyment and reasonable privacy of the landlord and other tenants within the apartment building. The tenant did not participate in the hearing thus the only testimony I can consider in my decision is that of the landlord and her witness. No physical evidence was submitted but the testimonies given are justification to the decision. I find that the tenant did not meet her obligations as set out in the *Act* under sections 10 and 24.

Decision

22. I find that the termination notice with cause issued on 2-May-2023 under section 24 of the *Act* is a valid notice.

23. I find that the tenant should have vacated the premises by 8-May-2023.

Summary of Decision:

24. The termination notice issued on 2-May-2023 under section 24 of the Act is a valid notice.
25. The tenant shall vacate the premises immediately
26. 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.
27. The landlord will be awarded an Order of Possession.

June 1, 2023
Date



Pamela Pennell, Adjudicator
Residential Tenancies Office