

Residential Tenancies Tribunal

Application 2023-0459-NL

Decision 23-0459-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 11:08 a.m. on 28-June-2023.
2. The applicant, [REDACTED] represented by [REDACTED] hereinafter referred to as "the landlord", participated in the hearing. The respondent, [REDACTED] hereinafter referred to as "the tenant", also participated in the hearing. Both parties attended via teleconference.

Preliminary Matters

3. The applicant stated that the notice of hearing document was left in the hallway of the apartment in front of the tenant's door. In accordance with the *Residential Tenancies Act, 2018* this is not good service, however the respondent has waived service and agreed to proceed with the hearing.
4. The rental unit is within an apartment building and a written rental agreement commenced on 8-June-2022. Rent is \$750.00 per month and is paid on the first of each month and a security deposit of \$375.00 was received in June 2022 and is still in the landlord's possession.
5. There is a dispute over the service of the termination notice. The landlord submitted a copy of the termination notice dated for 20-February-2023 under section 24 of *The Act* to vacate the premises by 26-February-2023 (LL#1). The landlord stated that she sent the notice electronically via text to [REDACTED]. The tenant confirms that the cell number was a good number however she states that she was not served the termination notice as her phone was stolen in November 2022. The tenant stated that she made the landlord aware that her phone was stolen and her cell number was no longer a valid number. The landlord disputes receiving any messages regarding the same. The tenant could not prove that she made the landlord aware or provided the landlord with a new phone number for the purpose of service thus the termination notice is considered served.

Issues before the Tribunal

6. The landlord is seeking:
 - Vacant possession of the rented premises

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 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy.

Issue 1: Vacant Possession of Rented premises

Relevant Submissions

9. The landlord submitted a copy of the termination notice dated for 20-February-2023 under section 24 of *The Act* to vacate the premises by 26-February-2023 (LL#1).

Landlord's Position

10. The landlord states that she is seeking vacant possession of the unit due to a number of reasons; (1) noise due to on-going traffic back and forth (2) the [REDACTED] [REDACTED] on the premises (3) having a dog stay in the unit and (4) drugs on the premises.
11. The landlord states that she has received numerous complaints from staff and tenants regarding the noise from people coming and going. She states that a young tenant [REDACTED] [REDACTED] is bothered with the noise.
12. The landlord testified that a [REDACTED] has been spotted on the premises and this is very concerning to her as there are children living in the apartment building and a [REDACTED]
13. The landlord testified that the tenant had [REDACTED] dog stay in the unit with her for a few days and that dogs are not permitted on the premises.
14. The landlord states that she feels that all the comings and goings of other people to the property is drug related. She testified that packages get dropped off to the tenant.

Tenant's Position

15. The tenant disputes making any noise within the unit or at the front entrance of the unit. She states that she do not have guests coming and going. She has a couple of friends that visit infrequently.

16. The tenant testified that she do not know who the [REDACTED] is and that he is not around the premises to visit with her. She testified that she has never met with him nor has he ever been anywhere around her unit.

17. The tenant admits having a friend stay over for 3 nights with a dog. She testified that this happened on April 22-25, 2023 and that she was never told that a dog could not stay. She testified that there are a lot of animals living on the premises and she had no idea that it was a problem.

18. The tenant disputes having any drugs on the premises and states that she is drug free. She testified that she is [REDACTED] and doing really well with it. She testified that she has taken [REDACTED] and has shared the results with her landlord.

Analysis

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 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 20-February-2023 to vacate the premises on 26-February-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 timeline requirements of the Act.

21. With regards to the noise, the landlord did not provide any proof to show that the tenant was making noises. The landlord made reference to 2 staff members whom she stated could be witnesses but the landlord did not call any witnesses during the hearing and she did not provide any sworn witness statements. The landlord did submit copies of emails from her staff but I did not accept same as credible evidence as they were not sworn affidavits.

22. With regards to the [REDACTED] I find that the landlord could not show a relationship between the tenant and that person. The landlord submitted very faint pictures of a person on the premises but no pictures of that person with the tenant or in the tenant's unit. I find that the landlord did not prove that the tenant was responsible for that person's presence on the property.

23. With regards to the dog, the landlord stated that no dogs are allowed on the premises but then confirmed that dogs are living on the premises. I asked the landlord if the rental agreement stated no dogs permitted and she responded no. The landlord said that animals were permitted with permission. I find that the tenant was honest when she stated that she was not aware that the dog could not stay for a few nights with her guest.

24. With regards to the landlord's claim that the tenant brings drugs onto the premises, I find that the landlord did not provide any proof to support her claim. In fact, the landlord stated that she was aware that the tenant had been [REDACTED]
[REDACTED]

Decision

25. I find that the landlord does not succeed in her claim for vacant possession.

Summary of Decision:

26. The termination notice issued to the tenant on 20-February-2023 is not a valid notice.

July 13, 2023

Date

[REDACTED]
Pamela Pennell, Adjudicator
Residential Tenancies Office