

Residential Tenancies Tribunal

Application 2023-0734-NL

Decision 23-0734-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 10:04 a.m. on 5-October-2023.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing via teleconference. The applicant's representative, [REDACTED] attended and also in attendance was [REDACTED] a support person for the applicant.
3. The respondent, [REDACTED], represented by [REDACTED], hereinafter referred to as "the landlord", attended via teleconference. Also, [REDACTED] attended.
4. [REDACTED] (witness 1) was called into the hearing by the applicant. [REDACTED] (witness 2) was called into the hearing by the respondent.

Preliminary Matters

5. The rental unit is an apartment located in an apartment building. The tenant moved in the unit on 1-June-2020. There was a written term rental agreement which is now a month to month tenancy. Rent is \$1175.00 per month due on the first of each month. A security deposit of \$552.50 was paid on 19-May-2020 and is in the possession of the landlord.
6. The applicant submitted an affidavit stating that she had served the landlord with the notice of hearing personally on 22-August-2023 at the respondent's place of business and the respondent confirmed receiving the document on that day (TT#1). In accordance with the *Residential Tenancies Act, 2018* this is good service.

Issues before the Tribunal

7. The tenant is seeking:
 - Validity of termination notice.

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(1) 7; Statutory conditions and Section 24; Notice where tenant contravenes peaceful enjoyment and reasonable privacy. Also relevant and considered are the following sections of The *Human Rights Act, 2010*: Section 5; Application of the Act and Section 9: Prohibited grounds of discrimination and Section 12; Right to occupy commercial and dwelling units.

Issue # 1: Validity of Termination Notice

Relevant Submissions

10. The tenant submitted a copy of a termination notice issued to her on a *Landlord's Notice to Terminate Early – Cause* form (TT#2). It was dated for 31-July-2023 under Section 24; Notice where tenant contravenes peaceful enjoyment and reasonable privacy to vacate the premises by 31-August-2023.

Landlord's Position

11. The landlord's representative testified that they gave the termination notice to the tenant after a very concerning incident at the apartment building which occurred approximately 7:00am on the morning of 29-July-2023. The landlord's representative testified that the morning began with at least 3 phone calls (8:00am, 8:28am and 8:59am) regarding human fecal matter witnessed by other tenant's on the elevator floor and surrounding hall way of the apartment building. She stated that it was a very extreme and upsetting situation for the other tenant's.
12. The landlord submitted into evidence a video (LL#1) captured by the apartment's security department to support their claim that this incident interfered with the peaceful enjoyment of the other tenant's within the apartment building. The landlord's representative gave a recount of what was witnessed on the video and stated that the tenant entered the building with her dog, proceeded to the elevator where she took down her pants and underwear and had a bowel movement on the floor of the elevator. She left her dog and purse outside the elevator and went up to her floor, exited the elevator and removed her pants and underwear leaving waste on the floor in the hallway, throwing her underwear across the floor and proceeded down the hallway with her door key in her hands. She opened the door to her apartment, entered her apartment but then came back out into the hallway and went downstairs.
13. The landlord called witness 2 into the hearing to support their testimony. Witness 2 testified that on the morning of 29-July-2023 at approximately 7:00am he was doing his laundry in the laundry room. At approximately 8:05am he went back to the laundry room to get his clothes and noticed a mess of excrement all over the elevator. Witness 2 stated that when the elevator door opened, the applicant was in the dirty elevator with her dog and she was going to the laundry room as well. She had the dog in her arms and the dog's leash was dragging the floor, leaving a mess of excrement from the elevator to the laundry room. Witness 2 stated that he asked the applicant if her dog made the mess in the elevator and she responded that it was not her dog and that she

had called and reported the incident. When the landlord's representative asked witness 2 if the applicant's demeanor was any different that morning, he responded that her behavior was normal and that she communicated how she always communicated.

14. The landlord's representative stated that the smell in the area was extremely bad and it was classified as a biohazard. The landlord's representative testified that they had to hire Belfore to sanitize the area as they do not have staff available 24\7 to help the tenant's with their well-being or deal with such incidents. The landlord's representative stated they are unable to risk any future episodes of this happening and she stressed that they are not an *assisted living facility*. The landlord stated that they have a responsibility to ensure that the peaceful enjoyment of all tenant's is not contravened. The landlord stated that they had a right to give the tenant a termination notice under Section 24 of the *Act* and they stated that they believe it is a valid notice.

Tenant's Position

15. The tenant's representative did not dispute the details of the video as stated by the landlord, however she stated that the tenant had a medical emergency that was an isolated incident and agrees that it occurred approximately 7:00am on the morning of 29-July-2023. The tenant's representative stated that in her opinion and backed by medical documentation, the tenant had a seizure and was unaware of what she was doing. The tenant's representative stated that the tenant does not require *assisted living* and that she is an independent person who had a medical episode, the same as if she had a heart attack. The tenant's representative stated that the tenant was remorseful, embarrassed, and has experienced PTSD as a result of the incident. The tenant's representative entered 3 letters into evidence as follows (TT#3):

Letter #1: Medical Documentation – dated 28-August-2023 from a Neurologist at [REDACTED] confirming that his patient (the applicant) attends the [REDACTED] [REDACTED] and has right temporal lobe seizures which are not fully controlled in that she continues to have breakthrough seizures. The Neurologist stated that he assured his patient that the incident that occurred on 29-July was not her fault because the incident was not a voluntary act. The neurologist continued to state that fecal incontinence cannot be controlled by the patient.

Letter #2: Medical Documentation – dated 25-September-2023 from tenants Family Physician supporting the tenant and stating that his patient (the applicant) is known to have epilepsy and as a result of her recurrent seizures, she may experience periods of fecal incontinence. The physician stated that the event occurred, in his opinion, as a result of seizure activity.

Letter #3: General Information – dated 7-September-2023 from Epilepsy Newfoundland and Labrador providing general information on Epilepsy and how epilepsy leads to incontinence.

16. In addition to the above letters provided by the tenant, witness 1 was called into the hearing to support the tenant's testimony. Witness 1 testified that he left his apartment the morning of 29-July-2023, took the stairway and noticed the applicant's dog and handbag next to the elevator. He testified that he took the dog and her handbag to her apartment and when she answered the door, she did not seem to be cognitive. Witness 1 stated that he knew something was wrong with her but he wasn't sure what it was. He stated that she did not seem attentive to what was going on. Witness 1 vouched for the applicant's character and stated that she was a nice person and a good neighbor and that he walked her dog for her occasionally.

Analysis

17. The relevant subsections of section 10 (1) 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.

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 31-July-2023 to vacate the premises on 31-August-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*. I find that the termination notice meets the timeline requirements of the *Act* and is a valid notice in that manner.

20. With regards to whether or not the notice meets the requirements of Section 10(1)(7)(a) of the *Residential Tenancies Act, 2018* as stated above, I have taken all testimony, evidence and witness statements into consideration. I accept the landlord’s claim that the actions of the tenant on the morning of 29-July-2023 interfered with the peaceful enjoyment of the other tenant’s in the building especially the tenant’s on the fifth floor. I asked the landlord if there have ever been other incidents in the unit whereby the tenant interfered with the peaceful enjoyment or reasonable privacy of the other tenants and she responded that the tenant had been given letters of warnings on 2 earlier occasions, (2021), for throwing things over her balcony and for standing on her balcony naked. Given the testimony of witness 1 who was most likely one of the first people to see the applicant after the episode and taking into consideration the medical documentation on file, I am unable to see how the medical crisis meets the criteria of Section 10(1) (7)(a) as stated above.

21. The tenant would have had to **unreasonably** interfere with the peaceful enjoyment which was not the case. This incident was not planned or malicious. In accordance with the medical documentation on file, this incident was the result of a medical emergency, it was not a voluntary act and it was the result of seizure activity. The fact that witness 1 testified that the tenant was not cognitive or attentive when he returned her dog and handbag validates what the medical professionals are suggesting is true. The fact that the tenant left her dog and personal handbag on the first floor outside the elevator speaks to her state of mind at the time. Witness 2 testified that the tenant was communicative approximately 65 minutes after the incident happened which could mean that the seizure activity had ended at that point but it does not mean that she was aware what happened during the seizure activity.

22. The medical documentation shows that the tenant has a disability and the medical professionals are stating that the incident occurred as a result of that disability. With that said, the *Human Rights Act, 2010* would have to be considered. See relevant sections stated below:

23. Section 5 of the *Human Rights Act, 2010* states;

Application of the Act

5. This Act shall take precedence over other Acts where they conflict with this Act whether those Acts were enacted before or after this Act comes into force.

24. Section 9 (3) of the *Human Rights Act, 2010* states;

Prohibited grounds of discrimination

9.(3) Where this Act protects an individual from discrimination on the basis of disability, the protection includes the protection of an individual from discrimination on the basis that he or she

- a) has or has had a disability;
- b) is believed to have or have had a disability; or
- c) has or is believed to have a predisposition to developing a disability

25. Section 12 (1) of the *Human Rights Act, 2010* states;

Right to occupy commercial and dwelling units

12(1) A person, directly or indirectly, alone or with another, by himself or herself, or by the interposition or another, shall not, on the basis of a prohibited ground of discrimination,

- a) deny to a person or class of persons occupancy of a commercial unit or a self-contained dwelling unit; or
- b) discriminate against a person or class of persons with respect to a term or condition of occupancy of a commercial unit or a self-contained dwelling unit.

26. I find that the incident on the morning of 29-July-2023 was without doubt very difficult for the landlord to deal with, rather upsetting for the other tenants who had to witness it and extremely embarrassing for the tenant herself. The tenant has a disability as confirmed by medical professionals and again the *Human Rights Act, 2010*, has to be taken into consideration.

27. I find that the tenant may have interfered with the peaceful enjoyment of some other tenant's on the morning of 29-July-2023 and also during the previous incidents but the landlord did not have a right to issue a termination notice under Section 24 of the *Residential Tenancies Act, 2018*. I find the incident does not meet the definition of "unreasonable" as stated in Section 10(1)(7)(a) of the *Act*.

28. I find that the termination notice is not a valid notice.

Decision

29. The tenant's request for a determination of the validity of the termination notice is that the notice is not a valid notice.

Summary of Decision:

30. The termination notice dated 31-July-2023 to vacate the premises by 31-August-2023 under Section 24 of the *Residential Tenancies Act, 2018* is not a valid notice. .

October 18, 2023

Date

Pamela Pennell
Residential Tenancies Office