

Residential Tenancies Tribunal

Application 2023-0774-NL

Decision 23-0774-00

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 1:45 PM on September 14, 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", attended the hearing.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants", attended the hearing.
4. The details of the claims were presented as a written yearly fixed rental agreement which had evolved into a monthly rental agreement in October 2022. Rent is set at \$1,037.00 of each month, which includes internet and due the first of each month. There was a security deposit collected on this tenancy of \$750.00, still in possession of the landlord. The tenants have resided at [REDACTED] since 16 October 2021. The landlord issued a termination notice on 13 August 2023 to terminate the tenancy on 20 August 2023 under section 24 of the *Residential Tenancies Act, 2019* (**Exhibit L # 1**). The tenants were served a copy of the Application for Dispute Resolution via electronic mail ([REDACTED]) on 29 August 2023 at approximately 11:48 PM under section 42 of the *Residential Tenancies Act, 2018* (**Exhibit L # 2**).
5. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

6. The landlord did not amend her Application for Dispute Resolution during the hearing.

Issues before the Tribunal

7. The landlord is seeking the following:

- An order for vacant possession of the rented premises
- Hearing Expense

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in section 47 of the *Residential Tenancies Act, 2018*
9. Also relevant and considered in this case 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: Validity of Notice/Vacant Possession of the Rented Premises

Landlord Position

11. The landlord is seeking to recover possession of the rented premises located at [REDACTED]
[REDACTED]
12. The landlord testified the rental agreement is a month to month tenancy and that a notice to terminate was issued on 13 August 2023 under Section 24 of the Act (**Exhibit L # 1**) to terminate the tenancy on 20 August 2023. The landlord indicated on the hearing date (14 September 2023), both tenants remain in the unit.
13. The landlord testified that her daughter lived upstairs from the rental property at [REDACTED]
[REDACTED] and the rental unit was below her daughter's residence. The landlord further suggested she did not reside in the residence with her daughter.
14. The landlord testified that there were concerns with guests who visited the tenants, noise complaints, and concerns that the tenants may be offering childcare in [REDACTED]
[REDACTED] as the rental unit did not have proper insurance to be offering child care. Furthermore, the landlord expressed concerns with possible illicit substance use in the rental unit, along with extended family members staying with the tenants, who were not attached to rental unit (**Exhibit L # 3**).

15. The landlord testified due to the actions of the tenants, the alleged behaviors of the tenants was detrimental to the health of another tenant (**Exhibit L # 4**).
16. The landlord did not call any witnesses in this matter.
17. The landlord is seeking vacant possession of the property.

Tenants Position

18. The tenants testified they received a notice to terminate the tenancy (**Exhibit L # 1**).
19. The tenants offered testimony that the landlord's termination notice was issued for an invalid purpose. Both tenants denied any non-compliance with the rental agreement, specified family members would visit the rental unit, not staying for long periods of time; denied any illicit substance use in the rental property; denied any concerns with noise from their rental unit; denied any pets in the apartment; and, identified themselves as working full-time employment.
20. The tenants testified they were currently in the process of purchasing their own home and were willing to leave the property of [REDACTED] once their purchase was finalized (**Exhibit L # 5**). The tenants testified they have paid rent as required by the current rental agreement.

Analysis

21. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 24 and 34, as well as the service requirements identified in section 35.

22. Section 24 requires that when a premises is rented for month to month, the landlord can issue the tenants notice that the rental agreement is terminated and the tenants are required to vacate the residential premises on a specified date not less than 5 days after the notice has been served. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 1**), I find the notice was served on 13 August 2023 with a termination date of 20 August 2023 is in full compliance with the requirements of Section 18(2)(b). Sections 24(2) and 34 identify the technical requirements of the termination notice. On examination of the termination notice, I find that all these criteria have been met.
23. While the technical requirements of the termination notice have been met, questions remain. The section 24 notice that has been issued required that the applicant show on the balance of probabilities that there was just cause for the issuance of a short notice.
24. Section 10(7)(a) of the *Landlord Tenancies Act*, 2018 states:

(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 on the property of which they form part

25. According to Residential Tenancies Policy 7-05 Peaceful Enjoyment, interference of peaceful enjoyment is defined as: “an on-going disturbance or activity, outside of normal everyday living, caused by the landlord or the tenant”. Peaceful enjoyment may include, but is not limited to the following: (i) excessive noise; (ii) aggressive or obnoxious behavior; or (iii) threats and harassment.
26. The landlord had offered verbal testimony, along with written evidence which alleged concerns with the tenants’ actions. That said, during the hearing, the landlord stated, “I don’t have evidence” to confirm her allegations that the tenants have impacted her or other tenants peaceful enjoyment, nor were any witnesses called on behalf of the application. Both tenants have maintained through both previous electronic messages and during the hearing, there was no direct evidence to confirm how tenants actions contravenes peaceful enjoyment and reasonable privacy of the landlord. Tenants did acknowledge visits from family members for brief periods of time, along with concerns with lack of parking only when family visited. This evidence, however, would not be considered unreasonable. I find the landlord’s claim for vacant possession of the property fails based on the balance of probabilities, there was a lack of evidence to confirm unreasonable interference by the tenants on the peaceful enjoyment.

Decision

27. The landlord’s claim for vacant possession fails.

Issue 2: Hearing Expense- \$20.00

28. The landlord's paid an application fee of \$20.00 (**Exhibit L # 6**).
29. As the landlord's claim has been unsuccessful, the landlord shall pay the \$20.00.

Decision

30. The landlord's claim for hearing expenses does not succeed in the amount of **\$20.00**.

Summary of Decision

31. The landlord's claim for an order for vacant possession does not succeed.
32. The landlord's claim for hearing expenses does not succeed.

22 September 2023

Date



Michael J. Reddy
Residential Tenancies Office