

Residential Tenancies Tribunal

Application 2023-0778-NL
2023-0785-NL

Decision 23-0778-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:57 p.m. on 19-September-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondents and counter applicants, [REDACTED] and [REDACTED], hereinafter referred to as “landlord1 and landlord2” attended by teleconference.
4. The tenant’s mother attended as support, hereinafter referred to as “tenant’s support person.”
5. The landlord’s submitted a witness list (LL#21) and called two witnesses, [REDACTED] and [REDACTED], hereinafter referred to as, “witness1 and witness2.”

Preliminary Matters

6. The tenant submitted an affidavit (TT#01) that states he served the landlord personally with notification of today’s hearing on 25-August-2023. The landlords submitted an affidavit (LL#01) stating that they served the tenant with notification of today’s hearing electronically on 25-August-2023. Both parties confirmed receipt of notification as stated.

Issues before the Tribunal

7. The tenant is seeking:
 - Validity of termination notice
 - Hearing Expenses \$20.00

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, Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy, and Section 35: Service of documents.

Issue 1: Validity of Termination Notice

Issue 2: Vacant Possession of the Rental Premises

Landlords' Position

10. Landlord1 reviewed the terms of the written monthly rental agreement held with the tenant. The tenant and his former partner took occupancy 03-September-2022 in January the tenant's partner gave notice, paid her month's rent and moved. The tenant remained in the unit, he pays \$1,000.00 rent a month. The rental period is from the third day of the month until the 2nd day of the following month. Rent is due in full on the third day of the month. Utilities are not included. A security deposit of \$500.00 was made on 03-September-2022 and the landlords are still in possession of the deposit.
11. Landlord1 confirmed that after the tenant's partner moved they took back access to the tenant's parking spot, she said that the tenant didn't have a car and they provided internet in lieu of the parking. She said that utilities are not included in the tenant's rent, however they do pay for the utilities as a perk, but this is not part of the agreement.
12. Landlord1 submitted the termination notice (LL#02) served to the tenant. The notice is a Section 24 notice on a Landlord's Notice to Terminate Early – Cause. It is signed and dated for 14-August-2023 with a termination date of 20-August-2023. She said that this notice was served to the tenant electronically. Landlord2 confirmed that the notice was sent at 8:04 p.m. on 14-August-2023.
13. Landlord1 said that there have been ongoing issues with the tenant smoking marijuana on the property. She indicates that the rental agreement submitted by the tenant (TT#02) shows in Part 11 that smoking of any kind is not permitted.
14. Landlord1 submitted ongoing text messages where she questions if the tenant has smoked marijuana, and reminds him that this is not tolerated:
 - 24-October-2022 (LL#04 – 06)
 - 26-October-2022 (LL#07)
 - 28-October-2022 (LL#08)
 - 28-November-2022 (LL#09)
 - 01-February-223 (LL#10)
 - 12-February-2023 (LL#11)
 - 14-March-2023 (LL#12)
 - 09-June-2023 (LL#13)
15. Landlord1 said that she was away seeking medical care in Ontario and the tenant did not realize that she had returned. (LL#14 - 15) she provided a text where she once

again asks about him smoking and he responds that he isn't smoking and that she isn't there.

16. Landlord1 disputes that the smell of marijuana is coming from the neighbors. She said prior to this tenant living in the unit there was never an issue.
17. The landlords presented two written sworn submissions
 - The first is from the tenant's previous partner (LL#17), it states that she confirms while she lived there that the tenant would smoke cannabis in the bathroom and blow the smoke into the vent. She also states that the tenant would go outside to smoke if the landlords were home but if they were out of the house, he would smoke inside.
 - The second statement (LL#18) is from a friend of the landlords who had house sat as well as looked after the landlord's children. She said that while staying there she has awakened to the smell of marijuana smoke that is strong enough to make someone sick. She said that when she was babysitting the children on a couple of occasions she left the house with the children due to the smell of smoke.
18. The landlords also presented two witnesses:
 - Witness1 said that she works at the house cleaning for the landlords. She said that she complained about the overwhelming smell of smoke. She explained that it is particularly strong when you open the door to the basement and downstairs laundry room. She left her position in June because she has asthma and could not work there due to the smoke. She has recently returned, however she said that there is still an issue with the smoke. Prior to the downstairs tenant living there this was not an issue.
 - Witness2 is a family friend, he stated that he has been there when there is a strong smell of smoke coming up from downstairs. He estimate that 4 or 5 times out of 10 visits he gets the smell of marijuana smoke from downstairs.
19. The landlords also raised issue with the tenant having a gas powered bike in his apartment. Landlord1 explained that the tenant was not permitting them into the apartment and that they wanted to complete an inspection to ensure that nothing was being damaged. She said that they gave the tenant notice to enter and they then entered on 13-September-2023. She provided a time stamped picture of her posting the notice (LL#20) on 13-September-2023.
20. Landlord1 said that the bike had spilled gas and she pointed out that the tenant had mentioned in a number of his message (LL#10 & LL#12) responses that he would light some candles to cover the smell of the smoke when she complained about the smell of smoke. She points out that in many of his rooms he had 4 candles that he was lighting. She is really concerned about this in light of the fact that the motorized bike is leaking gas in the apartment and is concerned he will "blow them all up."
21. Landlord1 said that they really tried to work this out with the tenant. She explained she is unwell and that they have let this go on for too long. The tenant is not changing his behavior and they need him to move out. She explains that the tenant's behavior is interfering with the peaceful enjoyment of her family. They have young children and she doesn't want them exposed to the marijuana smoke any more. She said that she can't

even have play dates for her children because she never knows when the place is going to stink of weed. She is seeking vacant possession of the apartment.

Tenant's Position

22. The tenant submitted the original rental agreement (TT#02), he confirms the details as stated by the landlord. He said that once his partner moved he lost his parking spot, his rent didn't change, but internet was provided in replacement of the parking space. He stated that there was supposed to be another agreement signed but he didn't receive the new agreement. The tenant's support person said that utilities are also included in the rent and that the utilities are not in the tenant's name.
23. The tenant confirms receipt of the termination notice as stated by the landlords.
24. The tenant and his support person deny that the tenant ever smoked in the apartment. They believe that the landlord has her window open and is smelling smoke from a neighbor.
25. The tenant and his support person both take issue with the landlords entering the apartment on 13-September-2023. He refers to their entry as breaking in. He said that the notice to enter is dated for the 13th and that they entered on the 13th.

Analysis

26. Statutory condition 7.(a), set out in section 10.(1) of the *Residential Tenancies Act, 2018* states:

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.

(b) The landlord shall not unreasonably interfere with the tenant's reasonable privacy and peaceful enjoyment of the residential premises, a common area or the property of which they form a part.

27. According to Residential Tenancies Policy 7-05 Peaceful Enjoyment, interference of peaceful enjoyment is defined as: "an ongoing disturbance or activity, outside of normal everyday living, caused by the landlord or the tenant".
28. I accept the testimony and evidence of the landlords and their witnesses that the tenant is smoking in the apartment. I acknowledge that the tenant has denied this behavior, however, 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. Based on the consistent testimony of the two landlords, the two written witness

statements, and the two witnesses who testified, coupled with the ongoing messages between landlord1 and the tenant, I accept that the tenant was smoking in the apartment.

29. As the landlords and the babysitter both had to remove the children from the home and as the cleaning lady had to end her employment with the family due to the smoke in the home, it is my finding that the landlords have proven their claim that the tenant is impacting their ability to peacefully enjoy their home. That being said, the testimony of the landlords has called into question the validity of the actual notice.
30. A notice for interference with Peaceful Enjoyment and Reasonable Privacy requires not less than 5 days' notice. When considering notice you do not include the day of service or the day of termination. Landlord2 checked the message (paragraph 12) and confirmed that the termination notice was sent electronically at 8:04 p.m. on 14-August-2023. In accordance with Section 35.(6) of the Residential Tenancies Act, 2018, if the notice is sent electronically after 4:00 p.m. it is considered served the next day. The service of the termination notice on the 15-August-2023 does not provide adequate notice as it is less than the 5 days required and I therefore find that the notice does not meet the service requirement and is not valid.

Service of documents

35. (6) For the purpose of this section, where a notice or document is sent electronically, it shall be considered to have been served on the day it is sent, if the document is sent by 4 p.m., or the next day that is not a Saturday or holiday, if the document is sent after 4 p.m.

Decision

31. The landlord's claim for vacant possession fails. The termination notice is not valid.

Issue 3: Hearing expenses reimbursed \$20.00

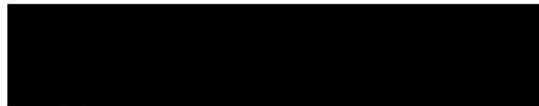
32. The tenant submitted the receipt for \$20.00 for the cost of the hearing (LL#04) and pursuant to policy 12.01, as his claim has been successful is entitled to reimbursement of that cost from the landlord.

Summary of Decision

33. The termination notice dated 20-August-2023 is not valid.
34. The landlord shall reimburse the \$20.00 application fee to the tenant.

20-September-2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office