

Residential Tenancies Tribunal

Application 2023-0795-NL

Decision 23-0795-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 30-November-2023.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, did not attend.

Preliminary Matters

4. This application was originally joined with a counterclaim with the number 2023-0801-NL. However, the counterclaim was discontinued by the respondent.
5. The tenant was not present or represented at the hearing and I was unable to reach him by telephone at the start of the hearing. 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 they have been properly served. The landlord submitted an affidavit (LL#1) with his application stating that he had served the tenant with notice of the hearing by pre-paid registered mail ([REDACTED]) on 11-November-2023. The registered mail tracking indicates that the tenant received the notice. In accordance with the *Residential Tenancies Act, 2018* (The Act) registered mail is considered served 5 days after it has been sent. 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 his absence.

Issues before the Tribunal

6. Should the landlord be granted an order for vacant possession?

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Act*.
8. Also considered and referred to in this decision are sections 24 and 34 of the *Act* as follows:

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.

Requirements for notices

34. A notice under this Act shall

- (a) be in writing in the form prescribed by the minister;
- (b) contain the name and address of the recipient;
- (c) identify the residential premises for which the notice is given; and
- (d) state the section of this Act under which the notice is given.

Issue 1:

Landlord's Position

9. The landlord says he has given the tenant multiple termination notices and that the tenant should have vacated the property. He adds that the tenant has interfered with the landlord's other tenants upstairs to the point where three of them have left due to the tenant's behaviour.

Analysis

10. Multiple termination notices were issued but only one, the latest issued, is the subject of this decision. This termination notice was submitted and entered as LL#2.

11. A termination notice is only valid if it does not conflict with the *Act*. In the case of a notice under s. 24, where tenant contravenes peaceful enjoyment and reasonable privacy, the notice specifically must comply with the general notice provisions under s. 34, the requirements listed in s. 24(2), and the service requirements under s. 35.
12. LL#2 is in writing in the form prescribed by the Minister. It contains the name and address of the tenant. It identifies the residential premises it regards. It specifies that it is issued under s. 24 of the *Act*. It is therefore compliant with section 34.
13. The landlord testified that he had attempted to serve the notice to the tenant personally, but this failed as the tenant did not respond to his knocking at the door. The landlord therefore posted the notice of termination to the tenant's front door. I am satisfied that this constitutes a conspicuous place on the tenant's residential premises in accordance with s. 35(2)(d) of the *Act*.
14. The termination notice is signed by the landlord. It states a move out date. It was served in accordance with s. 35 of the *Act*. It is therefore in compliance with s. 24(2).
15. The notice was served on 24-August-2023. It gives a move out date of 30-August-2023. There are exactly five clear days between the date issued and the move out date, as required under s. 24(1).
16. The only remaining issue is whether or not the tenant unreasonably interfered 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 and was therefore in violation of statutory condition 7(a) listed under s. 10 of the *Act*.
17. The landlord provided two sworn statements in support of his argument that the tenant had violated the condition. The first of these, LL#3, is a sworn affidavit from a neighbor. While disturbances with the rights of a neighbor that is not a tenant of the landlord is not in itself a violation of the statutory condition, I take this statement as evidence of what was happening in the apartment and accept it as evidence corroborating the landlord's evidence.
18. The neighbor says her summer and fall have been "unbelievably difficult." She says that partying at the premises starts early and goes on all night. There is a continual stream of people in and out of the front door. These people smoke, drink, argue, shout, light fires in the fire pit, and have even torn up the premise's front step for firewood. One particular night, a Tuesday, was worse than most. On that night the neighbor and the person living with her were up from 1 a.m. onward trying to keep their dog calm, as it was agitated by the goings-on at the tenant's apartment. There were loud angry voices, slamming doors, and a source of flame could be seen inside of a shed on the property. Just before 3 a.m. there was a physical confrontation in the stairway. A young man was beating another young man who was laying on the ground. Police and ambulance services responded.
19. The neighbor says that the police have been to this location many times, and seemed frustrated. She believes this frustration is why they did not "bother" to go to the tenant's apartment to talk to the residents. She says she and the landlord have previously tried to resolve matters by speaking to the tenant, but nothing has changed. She sympathizes

greatly with the people who live above the tenant's apartment. Given the noise where she lives, she cannot imagine how those above the premises can ever get any rest. She fears that someone will get seriously injured if nothing is done.

20. LL#4 is a sworn affidavit from a tenant or former tenant who was living in the upstairs apartment. It is brief and consists entirely of matters of fact that the writer observed, with no mention of the impact on the writer. It documents the events of the day the neighbor described in LL#3. It begins by saying that the writer heard the "usual sounds" coming from the downstairs neighbor, those being loud music, yelling, and the breaking of beer bottles. After the police and ambulance services had de-escalated the situation and left, the tenant came "banging" on the writer's door asking if they wanted to drink with him.
21. The landlord also testified to the effect that on another date, the upstairs tenant at that time (different than the writer of LL#4) had felt the need to call the fire department to respond to smoke coming from the tenant's apartment. A series of text messages was provided in support of this (LL#5). I note that the messages begin by mentioning an earlier incident that had concerned them. They say a person, presumably the tenant, is "definitely a nice guy" but his actions concern them, particularly in regard to a person that had entered their home without their permission, thinking it was the tenant's. The landlord replies that he will speak to the tenant.
22. Further in LL#5 another incident is mentioned where there was a burning or chemical smell coming from the tenant's apartment that was giving the writer intense headaches. They said their partner tried to check on the tenant the night before but received no answer at the door, so they were concerned for his safety as well. The landlord said he would check on the tenant that day.
23. Another text on 05-July-2023 says that the tenant attempted to break into their apartment. He had attempted to break the window to get around the door lock, thinking it was his own apartment. At this point the messaging becomes terse, possibly due to the writer's growing frustration. The landlord says he will try to speak to the tenant. The landlord's frustration with the tenant is obvious by his phrasing, saying among other things that he told the tenant to "get his shit together."
24. Another text from the writer says that the tenant is constantly fighting in the premises with women.
25. A text on 03-Aug-2023 reports to the landlord that the smoke alarm had triggered and they smelled the burning smell again, very strongly. They contacted the fire department and, according to them, the responding firefighters told them this saved the tenant's life. He had allegedly been unconscious on the couch while something was burning on the stove. The writer complains that all their clothes and the entire upstairs apartment smell of burnt aluminum. They complain that the tenant is a danger to himself and others, and that the house could have burned down. The landlord testified that the fire department had broken the door to get in. At the time the fire was reported to him, the landlord had just arrived in [REDACTED] as part of his vacation. He testified that he was constantly responding to the emergencies.

26. LL#6 is a report from the [REDACTED] Fire Department on the incident. It is consistent with the accounts provided above.
27. LL#7 is a series of pictures depicting the state of the unit at the time they were taken before the notice was issued. There is substantial mess and poorly stored garbage. There appears to be damage to some of the furniture and flooring. Open beer bottles and cans are strewn about on furniture and floors.
28. Based on all of the evidence considered in its totality, I find the evidence to be in favor of the landlord's contention that his rights and the rights of the upstairs tenants were unreasonably interfered with by the tenant. The actions of the tenant and his guests prevented the other parties from having the peaceful enjoyment they were entitled to.
29. Based on all the above, the termination notice with a move out date of 30-August-2023 is valid.

Decision

30. The tenancy ended on the date of 30-August-2023. To the extent that the tenant is still living at the premises, he is doing so illegally. The landlord's request for an order of vacant possession succeeds.

Summary of Decision

31. The tenant shall vacate the premises immediately.
32. The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sherriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession.
33. The landlord is granted an order of possession.

06-December-2023

Date

[REDACTED]
Seren Cahill
Residential Tenancies Office