

Residential Tenancies Tribunal

Application 2023-0876-NL

Decision 23-0876-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 10 January 2024 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord”, attended the hearing. The landlord called a witness, [REDACTED] hereinafter referred to as “the witness”.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant”, did not attend the hearing, nor was he represented.

Preliminary Matters

4. The tenant was not present or represented at the hearing and there was no contact information for the tenant. 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 had issued the tenant a Landlord’s Notice to Terminate Early- Cause on 7 September 2023 with a request for the tenant to be out of the rental property by 13 September 2023 (**Exhibit L # 1**). The landlord included with her application and Affidavit of Service indicating she personally served the respondent an Application for Dispute Resolution on 10 November 2023 at [REDACTED] NL (**Exhibit L # 2**). On 5 December 2023, the Residential Tenancies Division sent the respondent a Notice of Rescheduled Hearing with date, time and contact information for this hearing (**Exhibit L # 3**) via registered mail. 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.
5. The landlord is seeking an order of eviction and an order of possession of property of the rental address of [REDACTED]

6. The landlord did not amend her application.
7. 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 outcomes 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.

Issues before the Tribunal

8. The landlord is seeking the following:
 - An order for vacant possession of the rented premises;
 - An order for Rental arrears in the amount of \$1,900.00; and,
 - Hearing expense in the amount of \$20.00

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act*, 2018
10. Also relevant and considered in this case are the following sections the *Residential Tenancies Act*, 2018: Section 10: Statutory conditions, Section 24: Notice where tenant contravenes peaceful enjoyment and peaceful enjoyment, along with Sections 34 and 35.

Issue 1: Vacant Possession of Rented Premises

Landlord Position

11. The landlord offered testimony the tenant had initially moved into the one-bedroom apartment at [REDACTED] NL on 1 June 2023. The landlord stated there was originally an oral monthly agreement in place which did not include a security deposit, with a monthly rental amount of \$1,300.00 due on the 1st day of each month. This rental amount does not include any utilities and the tenant remains in the property on the date of the hearing (10 January 2024).
12. The landlord offered testimony that she lived upstairs of the rental apartment and the noise of the tenant has negatively impacted her. She described her bedroom as being above the entry of the rental and she is being continuously woken during the night by the tenant and people visiting the rental unit. In addition, concerns were expressed with the visitors of the tenant, which has resulted in the landlord issuing the tenant termination notice on 7 September 2023, to vacate the property by 13 September 2023 (**Exhibit L # 1**). The landlord stated this notice was posted on the door of the rental unit.

13. The landlord offered testimony that it was common to have a police presence in relation to concerns with the tenant and the tenant's visitors at [REDACTED] NL, and alleged the tenant was using illicit substances.
14. The landlord testified she has been verbally assaulted by the tenant upon her request for payment of rent. She offered one situation when, "he said he was going to kill me. He came out (of his apartment) spitting saying, "I wish multiple men rape you" and following this situation, she is "frightened to death and I don't go there anymore".
15. The landlord stated approximately three weeks ago, there was a situation when she contacted 911 and requested police assistance as the tenant was at the front door of her residence banging on the door, and she felt it was an unsafe situation.
16. The landlord had a witness, who offered testimony at the hearing. The witness stated the police were familiar with the tenant and the rental address. The witness reported police, "frequent the address in relation to crimes involving associates he has around" and police members know the landlord, who has contacted police in relation to the tenant.
17. The landlord offered evidence that she issued a Landlord's Notice to Terminate Early-Cause to the tenant on 7 September 2023, to move out of the residential premises by 13 September 2023 (**Exhibit L # 1**). She testified that following this, she continued to have concerns with the tenant. She expressed concerns with her personal well-being being, influenced by the noise of the tenant, and stated she continues to be awoken by noise from the rental and associates of the tenant visiting [REDACTED]
18. The landlord testified on 1 October 2023, she attended the outside entry way to [REDACTED] [REDACTED] when she observed the tenant had changed the lock and installed a new lock and dead bolt on the door. She stated she did not give permission for this.

Analysis

19. Statutory conditions 6 and 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 conditions governing the residential premises apply:*

...

2. Obligation of the Tenant- *The tenant shall keep the residential premises clean, and shall repair damage caused by a willful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.*

...

6. Entry Doors-*Except by mutual consent, neither the landlord nor the tenant shall, during the use or occupancy of the residential premises by the tenant, alter a lock or locking system on a door that gives entry to the residential premises.*

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 of the property of which they form a part.*

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 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.

20. I accept the testimony of the landlord that the tenant’s alleged actions are having a negative impact on the peaceful enjoyment of her residence. In addition to testimony offered by the landlord, there was also testimony provided by a witness, who stated police are familiar with the rental address of [REDACTED] and associates of the tenant. In relation to the tenant changing the lock of the entry way of the rental, I accept the testimony of the landlord.
21. The validity of the termination notice is determined by its compliance with the notice requirements identified in Section 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 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 serviced. On examination of the notice issued and submitted into evidence (**Exhibit L # 2**), I find the notice was served on 7 September 2023 with a termination date of 13 September 2023. The notice issued is in clear compliance with the requirements of section of section 18(2)(b). Sections 24(2) and 34 identify the technical requirements of the termination notice. On examination, I find that all the criteria have been met.
23. It is for these reasons that I find there is sufficient evidence, as based on the balance of probabilities, for the landlord’s claim to succeed.

Decision

24. The landlord’s claim for vacant possession succeeds.

Issue # 2: Rental Arrears of \$1,900.00

Landlord Position

25. The landlord offered testimony the monthly rental amount for tenancy is \$1,300.00 due on the first of each month. She stated the tenant last paid for August 2023 and was seeking \$1,900.00 in rental arrears. In October 2023, the landlord testified she attended the front entrance of the rental unit and spoke with the tenant informing she was seeking payment of rent and the tenant was in arrears.
26. The landlord did not offer additional evidence related to the alleged rental arrears and did not offer a rental ledger.

Analysis

27. In review of the submitted Application for Dispute for Resolution (**Exhibit L # 2**), the rental arrears was identified as \$1,900.00 (\$1,300.00 rental arrears plus \$600.00 of alleged damages). Both amounts are two separate issues. Upon the examination of the evidence in relation to rental arrears, what I have is a lack of evidence and testimony offered by the landlord during the hearing. The landlord did not provide a listing of the rental periods and the rent owed for each period, along with the total amount, which is required evidence so as to provide the adjudicator the ability to make an informed decision. The landlord failed to provide a breakdown of the damages, the value of each item, and did not provide this Tribunal written estimates and/or receipts for repair of the damages.
28. In proceedings 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.
29. There is a lack of evidence to determine on the balance of probabilities , what, if any monies for rent and/or damages are owed.

Decision

30. The landlord's claim for rental arrears fails.

Issue # 3: Hearing Expense

31. The landlord paid an application fee of \$20.00 (**Exhibit L # 4**).

Decision

32. The tenant shall pay the expense of the landlord in the amount of \$20.00

Summary of Decision

33. The landlord is entitled to the following:

- An order for vacant possession of the rented premises;
- The tenant shall reimburse the \$20.00 application fee to the landlord; and,
- The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

18 January 2024

Date



Michael J. Reddy
Residential Tenancies Office