

Residential Tenancies Tribunal

Application 2023-0944-NL

Decision 23-0944-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:46 p.m. on 20-November-2023.
2. The applicant, [REDACTED] represented by [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], are represented by [REDACTED], she is hereinafter referred to as “the tenant,” she attended by teleconference.
4. The landlord presented a witness, [REDACTED], he is hereinafter referred to as “the witness,” he attended by teleconference.

Preliminary Matters

5. The landlord submitted an affidavit stating that he had served both tenants with notification of today’s hearing by email on 08-November-2023. The tenant confirms receipt of notification as stated by the landlord.

Issues before the Tribunal

6. The landlord is seeking:
 - Vacant possession of rental premises

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. 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 34: Requirements for notices.

Issue 1: Vacant Possession of the Rental Premises

Landlord's Position

9. The landlord submitted the term rental agreement held with the tenants (LL#02). The tenants took occupancy around 01-December-2022, and they pay \$850.00 rent a month. The rental period is from the first day of the month until the last. Rent is due in full on the first day of the month; however, the parties have agreed that rent will be paid every two weeks. A security deposit of \$425.00 was made at the start of the tenancy and the landlord is in possession of this deposit.
10. The landlord submitted a termination notice (LL#03) served to the tenants. The notice is a Section 24 notice on a Landlord's Notice to Terminate Early – Cause. It is signed and dated for 11-September-2023 with a termination date of 31-September-2023. The landlord said that this was served to the tenants by email on 11-September-2023. The landlord concedes that the Building Supervisor may have printed the notice and given the paper copy to the tenants on that date.
11. The landlord said that there have been ongoing issues with the tenants smoking marijuana by the building. He said that this is in violation of their rental agreement (LL#02) part 11.
12. The landlord explained that he lives in [REDACTED] and that he was in [REDACTED] on 07-08-September-2023. He when he entered the parking lot with the Building Supervisor the tenants were smoking marijuana by the door. When he approached them the male tenant became belligerent; he told the tenants that they couldn't smoke there and to go to the edge of the property by the picnic table.
13. Since that time the landlord has been contacted by the Building Supervisor to say that the tenants continue to smoke marijuana by the building. The landlord submitted a picture (LL#04) showing the tenants smoking by the side of the building.
14. The landlord called the Building Supervisor as a witness. The witness confirms that he and the landlord witnessed the tenants smoking marijuana by the building and that the male tenant was belligerent when approached. He also confirms that he has continued to witness the tenants smoking marijuana by the building both in person and by video. He clarified that he can identify who is in the picture (LL#04) provided because it is from a video and he can zoom in on the video.
15. The landlord believed that the tenant's name on the rental agreement (LL#02) was [REDACTED]
16. The landlord states that the tenants' behavior is interfering with the peaceful enjoyment of the other tenants in the building. He said that marijuana smoke is heavier than cigarette smoke and in the summer people want to have their windows open. They are violating the rental agreement (LL#02) and he is seeking vacant possession of the apartment.

Tenant's Position

17. The tenant confirms the details of the rental agreement as stated by the landlord.

18. The tenant states that they received a paper copy of the termination notice. She fails to understand why she is being evicted. She said that since they were told that they couldn't smoke cannabis by the door she goes over by the adjacent parking lot to smoke.
19. The tenant questions how can the Building Supervisor tell it is her in the picture submitted? She said that she is unable to clearly identify herself in the picture. She also disputes that she would be smoking cannabis in the picture because the three people in the picture are standing, and she said that she sits when she is smoking.
20. The tenant points out that the termination notice is addressed to [REDACTED] not [REDACTED].

Analysis

21. 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.

22. 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". Peaceful enjoyment may include, but is not limited to the following: (i) excessive noise; (ii) aggressive or obnoxious behaviour; or (iii) threats and harassment.
23. I accept the testimony and evidence of the landlord that the tenants are smoking marijuana outside the building. However, he has not provided any evidence to support why the tenants smoking marijuana outside would negatively impact the other tenants or the landlord. There is no supporting evidence to show that there have been complaints concerning this behavior. I acknowledge that the landlord has shown that the tenants are violating their rental agreement, but I find that he has not met the burden of proof to show the impact of this violation on himself or the other tenants.
24. Additionally, the termination notice itself (LL#03) has errors that render it invalid. The landlord has addressed the notice to the wrong name. In accordance with Section 34, of the *Residential Tenancies Act, 2018*, the notice must contain the name of the recipient, as follows:

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.*

25. Another error contained within the notice is that the date of termination is 31-September-2023, which is a nonexistent date. In William & Rhodes Canadian Law of Landlord and Tenant, when discussing termination notices, the authors point out that termination notices must be unambiguous and one of the principles that must be borne in mind is that “an inaccuracy in certain matters such as the date of termination cannot be ignored even if the wrong date is inserted by a slip”.
26. I find that this termination notice does not meet the requirements of the *Act* and is not valid.

Decision


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

Summary of Decision

28. The termination notice served by the landlord dated 11-September-2023 is not a valid notice.

November 30, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office