

## Residential Tenancies Tribunal

Application 2023-0994-NL

Decision 23-0994-00

Seren Cahill  
Adjudicator

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### Introduction

1. Hearing was held on 13-December-2023. Due to a medical emergency, the hearing was temporarily adjourned and then recalled on 15-December-2023.

### Preliminary Matters

2. One of the co-applicants [REDACTED] appeared via teleconference on her own behalf and as a representative of [REDACTED] who was unable to attend for medical reasons. [REDACTED] are hereinafter referred to as the landlords.
3. The respondent [REDACTED] hereinafter referred to as the tenant, appeared via teleconference.

### Issues before the Tribunal

4. Should an order of vacant possession be granted?

### Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
6. Also considered and referred to in this decision are sections 24 and 35 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: Vacant Possession of the Rental Premises**

#### Landlord's Position

7. The landlord testified that they have issued a valid termination notice (LL#4) and the tenant nevertheless refuses to leave the premises. They describe the tenant's behaviour as being inappropriate and interfering with other tenants.

#### Tenant's Position

8. The tenant admits he has made mistakes but submits that his behaviour has never risen to the level that would justify his eviction under s. 24 of the *Act*. He says he is a vulnerable individual, attempting to treat his alcoholism, and has nowhere else to go.

#### **Analysis**

9. 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 and the requirements listed in s. 24(2).
10. LL#4 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.
11. 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).
12. The notice was issued on 16-October-2023. It gives a move out date of 22-October-2023. There are exactly five clear days between the date issued and the move out date, as required under s. 24(1).

13. 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*, as follows:

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.

14. To be in violation of this condition, the tenant must interfere with the rights or reasonable privacy of the landlord or other tenants in the premises, and this interference must be in reasonable.
15. The landlord alleges that three individuals have had their rights interfered with by the tenant. These three are one of the landlords who resided in the unit for a time, another tenant in the unit, and the tenant who rented the separate but attached basement unit.
16. The landlord testified that there was a physical altercation between the tenant and the other tenant in the same unit, and this was followed by a threatening message. A recording of this message was provided (LL#3) and played at the hearing. In the recording the tenant expresses a sentiment to the effect that he is done with the other tenant's 'game' and that "from here on, it's mano-a-mano alright when I see you." Concerningly, he also says "I had no intentions or feelings of hitting you, but now? I'm gonna [expletive] lay you out if you come to this [expletive] house while I'm here." He expresses frustration with the other tenants behaviour, including what seems to be allegations of theft, and says he will "homicide" the person. He then tells the person to come over and apologize.
17. The tenant acknowledges this message and expressed what I accept as sincere regret. The tenant has an addiction to alcohol. He testified that he was not drunk at the time of the phone call, but he was at a stage in coming off from the substance that he gave him an effective "high." I accept that he was in a somewhat altered state of consciousness. He demonstrated awareness of the circumstances and a perspective that accords with the perspective he presented at the hearing, and this plus his description lead me to conclude that the altered state of consciousness notwithstanding, he was still in a state where he was aware of his circumstances and not hindered by any substantial delusions that would keep him from understanding his situation. I conclude that a reasonable person would know not to issue threats of this nature.
18. The tenant explained the circumstances leading to this message. He said he had been having issues with this other tenant since he moved in. He says the other tenant was constantly bothering him about money they claimed he owed them. He said they would offer to buy a tool or other item, he would give a price, and they would take the item and leave him an amount of money lower than the offered price, effectively committing theft. He says that on the day he left the message, the tenant had been bothering him about money and was pounding on his door. The tenant apparently then opened the door and

shoved the other tenant twice. The other tenant then restrained him and wrestled him to the ground.

19. The landlord had provided hearsay evidence that the other tenant had been assaulted by the tenant and had held him down in self-defense. The tenant's own account does not contradict that. He was being aggravated by the other tenant knocking loudly on his door. This is something that would annoy a reasonable person but cannot in these circumstances justify the tenant's reaction. By opening the door, removing the barrier between them, and by shoving the other tenant, he escalated the encounter from an argument to a physical confrontation.
20. Other tenants in the residential premises have a right to peaceful enjoyment. Physical attacks and threats are one of the most significant ways this right can be interfered with. The tenant in this matter admitted to actions that constitute this interference, and I do not find them to be reasonable in the circumstances.

### **Decision**

21. The termination notice LL#4 is valid.
22. The tenancy ended 22-October-2023.
23. Insofar as the tenant is still residing at the premises, he is doing so illegally.

### **Summary of Decision**

24. The tenant shall vacate the premises immediately.
25. 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.
26. The landlord is granted an order of possession.

04-January-2024

Date

  
Seren Cahill  
Residential Tenancies Office