

Residential Tenancies Tribunal

Application 2023-1005-NL
Application 2023-1038-NL

Decision 23-1005-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:07 a.m. on 30-November-2023.
2. The applicants, [REDACTED] (applicant 1) and [REDACTED] (applicant 2), hereinafter referred to as “the landlords” attended by teleconference.
3. The respondent and counter applicant, [REDACTED], herein referred to as “the tenant” attended by teleconference.

Preliminary Matters

4. The landlords testified that they served the tenant with the notice of hearing electronically by email to; [REDACTED] on 30-October-2023. The tenant confirmed receiving the document on that day. The tenant countered the claim and submitted 2 affidavits stating that she served the landlords with the notice of hearing by sending it electronically to; [REDACTED] and [REDACTED] on 2-November-2023 (TT#1). The landlords confirmed receiving the documents. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There is a written month to month rental agreement which commenced on 1-October-2023. Rent is \$1600.00 per month due on the first of each month. A security deposit of \$1000.00 was paid on 15-September-2023 and is still in the possession of the landlord.

Issues before the Tribunal

6. The landlord is seeking:
 - An order for vacant possession of the rented premises
7. The tenant is seeking:
 - Validity of the termination notice

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.

Issue # 1: An Order for Vacant Possession of the Rented Premises Validity of Termination Notice

Relevant submission:

10. The landlord submitted a termination notice under Section 24; Notice where tenant contravenes peaceful enjoyment and reasonable privacy. The notice was dated for 13-October-2023, with a termination date of 19-October-2023 (LL#1).

Landlord's Position

11. The landlords testified that there is continuous yelling and screaming and curse words heard from the tenants in the basement apartment. The landlords stated that they reside on the main level of the residence and the disturbances are interfering with their peaceful enjoyment. The landlords testified that there has been cannabis smoking in the unit and cigarette smoking on the premises which also interferes with their peaceful enjoyment.
12. Applicant 1 testified that on 12-October the tenant's children downstairs were home from school and the noise throughout the day was extremely loud. Applicant 1 testified that on 13-October at 4:30am there was loud partying noise that kept them awake. Applicant 2 testified that on 30-October she was working from home and had to move her home office to a back room in the house due to very loud noise, screaming curse words and doors slamming.
13. Applicant 1 testified that on 27-October there was a strong cannabis smell throughout the premises and smoke was exiting the basement through a vent. Applicant 1 stated that they could hear the tenant and her guest talking about how they are caught smoking in the unit. Applicant 1 testified that on 28-October he could hear the children screaming at the adults and on 1-November the landlords could hear the tenant say that if she has to leave, the landlords will pay. The landlord's stated that they fell threatened and want the tenants to vacate the property

Tenant's Position

14. The tenant did not dispute that her family has been the cause of loud noises within the unit and stated that her kids are loud, and they do yell, but they are trying to get settled. The tenant stated that the walls are thin, and she can hear just as much from upstairs as the landlords can hear from downstairs. The tenant disputed smoking on the premises and stated that she walks to the road to smoke. The tenant stated that they are trying to make a new start and moving her kids again would not be good for them.

Analysis

15. The notice was served under Section 24, of the *Residential Tenancies Act, 2018*, which states:

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.

16. 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(a) Peaceful enjoyment and reasonable privacy- *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.*

17. The tenant was given a termination notice on 13-October-2023 to vacate the premises on 19-October-2023. This meets the timeline of “not less than 5 days after the notice has been served” as set out in section 24 of the Act. The termination notice meets the timeline requirements of the Act.

18. Based on the landlord’s testimony, I accept that the tenant and her family are responsible for interfering with the peaceful enjoyment of the landlords who reside at the premises. The tenant did not dispute that her family was the cause of loud noise and stated that her kids do scream and yell. I accept that children are loud and there will be noise however continuous screaming, banging doors and the use of curse words can be very disturbing to other residents within the same premises. I accept the landlord’s testimony that the tenant was smoking cannabis in the unit and that she smokes on the premises. This combined with the continuous noise is disturbing behavior and interferes with the peaceful enjoyment and reasonable privacy of other occupants within a dwelling.

19. In accordance with the *Residential Tenancies Act, 2018*, I find that the respondent has contravened statutory condition 7(a) as set out in subsection 10(1) as stated above. As such, the termination notice meets the requirements of the Act and is a valid notice.

20. I find that the tenant should have vacated the premises by 19-October-2023.

Decision

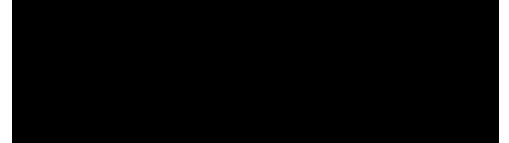
21. The landlord's claim for an order for vacant possession of the rented premises succeeds.
22. The tenant shall vacate the premises immediately.
23. The tenant shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached.

Summary of Decision

24. The tenant shall vacate the premises immediately.
25. The tenant shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.
26. The landlords will be awarded an Order of Possession.

December 7, 2023

Date



Pamela Pennell
Residential Tenancies Office