

Residential Tenancies Tribunal

Application 2023-1053-NL
2023-1050-NL

Decision 23-1053-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held 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, also attended by teleconference along with [REDACTED], who assisted them in the presentation of their evidence. The appropriate form was received designating her as an authorized representative.

Issues before the Tribunal

4. Was the termination notice issued on 01-November-2023 valid?
5. If so, should an order of vacant possession be granted?

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act 2018* (the *Act*).
7. Also considered in this decision are sections 24 and 34 of the *Act*, as follows:

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.

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: Validity of the termination notice

Landlord's Position

- 8. The landlord submits that the termination notice was valid and the tenant ought to have left the property. He says the tenant interfered with his right to peaceful enjoyment of the property by interfering with the viewing of the property.

Tenant's Position

- 9. The tenant says they did not interfere with the landlord's right to peaceful enjoyment and therefore the notice was invalid and the tenancy is still in effect.

Analysis

- 10. The landlord began looking to sell the rental premises sometime in October 2023. In accordance he gave the tenant a notice of eviction without cause under section 18 of the *Act*. Parties have not contested this notice and it is not at issue in this hearing. After this notice was issued the landlord began to arrange for viewings in order to find a buyer. These viewings happened through his realtor.
- 11. The landlord said that the realtor advised him that they were having trouble accessing the premises for viewings as the tenant was not cooperating. The realtor also said the apartments were messy, which discouraged potential buyers.
- 12. A series of text messages were provided (LL#1) that parties agree are between the landlord and the tenant. On 15-July-2023 the landlord asks the tenant to confirm receipt of notice that there will be a viewing the next day and the tenant confirms. On 18-July-2023 the landlord asks the tenant to confirm receipt of notice that there will be a viewing the next day and the tenant confirms. On 09-August-2023 the landlord asks the tenant to confirm receipt of notice that there will be a viewing the next day and the tenant confirms. Sometime in late September the landlord asks the tenant to confirm receipt of notice of a viewing and the tenant confirms. At this time the tenant also discloses that

their mother recently passed away and made a noise complaint about the downstairs tenant, saying their sleep was disturbed. The next day the landlord asks the tenant to confirm receipt of notice that there will be a viewing later that day and the tenant asks the landlord to reschedule. The landlord refuses. The tenant asks the landlord to skip their unit. The landlord refuses. On a subsequent Friday the landlord asks the tenant to confirm receipt of notice that there will be a viewing the next Sunday and the next Monday and the tenant confirms. On Saturday the landlord asks the tenant to confirm receipt of notice that there will be another viewing on Sunday. The tenant confirms and advises they will be present. The landlord expresses a preference that the tenant leave the premises for the viewing. The tenant refuses. The landlord asks again. The tenant refuses, reminding the landlord that they will not be present for the other viewing the same day. There is a disagreement about the amount of notice required. The viewing for the evening is cancelled. The landlord sends several more messages on subsequent days asking for confirmation of notice of viewings to no response. On 25-September-2023 the tenant tells the landlord they will not allow a viewing as they did not receive 24 hours' notice. Another disagreement ensues.

13. On 30-October-2023 the landlord sent the tenant a message asking to confirm receipt of notice that there will be a viewing, and the tenant responds "I don't think so buddy" and the use of image macros (memes) depicting landlords as leeches.
14. On 02-November-2023 the landlord issued a notice of termination for cause (LL#1). To be valid, a termination notice must be in accordance with the *Act*. LL#1 is in writing in the form prescribed by the minister. It contains the name and address of the recipient. It identifies the rental premises it regards, and it states it is a notice to terminate under s. 24 of the *Act*. Therefore, it complies with section 34.
15. For a notice to be valid under s. 24 of the *Act* must have contravened statutory condition 7(a) listed under s. 10(1), as reproduced here:

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.
16. There have been no allegations that the tenant interfered with other tenants or the landlord's privacy. The question in this case is then whether or not the tenant unreasonably interfered with the rights of the landlord. The landlord admitted at the hearing that his allegation was not that the tenant violated his peaceful enjoyment of the property in the 'traditional sense.' Rather, his allegation was based on the tenant interfering with his attempts to sell the unit. In particular he points to the communication he had with the tenant on 30-October-2023, the realtor's difficulty in accessing the unit, and the realtor's complaints that the unit was messy to the point that it interfered with sales.
17. The tenant submits that they had grown frustrated with the landlord's repeated requests for viewings and unwillingness to compromise, pointing in particular to the day shortly after their mother had passed. They highlighted their previous willingness to cooperate

as detailed in paragraph 12, above. They make the point that they are not required to confirm viewings and spoke to the effect that they felt there was no purpose in responding as the viewing would proceed regardless. Their representative characterized the conflict as one where both sides simply became frustrated. Regardless, I am not satisfied that rude communication by itself constitutes unreasonably interfering with the landlord's rights.

18. The landlord testified that the realtor told him they were denied entry. This is hearsay evidence which would likely not be admissible in a court of law. Under s. 46(2)(c) this tribunal has the power to admit evidence regardless of whether it would be admissible in a court. I accept the landlord's testimony on this matter as evidence of the proof of its content, but in accordance with the principles I do not give it the same weight as I would first-hand knowledge.
19. The tenant testified that they never prevented a viewing where they were given adequate notice. They noted that the door to the unit contains a locking mechanism with both a deadbolt and a doorknob that must be turned in opposite directions. Evidently the deadbolt must be left across while the door is not in use as it keeps the door from blowing open. They said they have seen people trying to get into the apartment have trouble with this at times. They suggest the realtor may have assumed they were locked about because they did not understand how to open the door. The landlord suggested that due to their profession and experience with different dwellings, a realtor would not make such a mistake. Based on all of the above I cannot conclude on a balance of probabilities that the tenant refused a realtor entry.
20. The comments regarding hearsay in the previous paragraph apply to the landlord's allegation that the tenant keeps their apartment in a state so messy that it deters potential buyers. The tenant denies this. The tenant's representative testified that she has seen the inside of the apartment a number of times and says that while the rental premises are not spotless, the level of mess does not rise to what the landlord is describing. She suggested it was within the range of a normal living situation. The tenant also made the point that the unit is one of a number that the landlord is trying to sell and questioned whether the realtor may have been speaking of one or more of the other apartments. Taking all of this evidence in account, I do not find on a balance of probabilities that the level of mess or uncleanness reached a level to interfere with viewings.
21. Considering all the evidence in its totality, I find that the landlord has not proven on a balance of probabilities that the tenant has unreasonably interfered with the landlord's rights, and the termination notice is therefore invalid. As we have not reached the move out date listed on a valid termination notice, the tenant retains the right to occupy the apartment and the application for vacant possession fails.

Decision

22. No interference with the landlord's right to peaceful enjoyment and reasonable privacy has been found. The termination notice LL#1 is therefore invalid and the request for an order for vacant possession fails.

Summary of Decision

- 23. The application for an order of vacant possession is denied.
- 24. The termination notice dated 01-November-2023 is invalid.

13-December-2023

Date



Seren Cahill
Residential Tenancies Office