

## **Residential Tenancies Tribunal**

Application 2023-1056-NL  
Application 2023-1058-NL

Decision 23-1056-00

Pamela Pennell  
Adjudicator

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### **Introduction**

1. Hearing was called at 9:03 a.m. on 6-December-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent and counter applicant, [REDACTED], represented by [REDACTED], herein referred to as “the landlord” attended by teleconference.

### **Preliminary Matters**

4. The tenant testified that she served the landlord with the notice of hearing personally on 14-November-2023. The landlord’s representative confirmed receiving the document on that date. The landlord countered the claim and submitted a copy of an affidavit stating that they served the tenant with the notice of hearing via prepaid registered mail ([REDACTED]) on 15-November-2023 (LL#1). The tenant confirmed receiving the document. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. The rental unit is part of a 10-unit row house dwelling. There is a written month to month rental agreement which commenced on 18-May-2023. Rent is \$730.00 per month due on the first of each month. Rent is subsidized by NL Housing and Income Support. A security deposit of \$300.00 was paid on 18-May-2023 and is still in the possession of the landlord.
6. The landlord amended their application to decrease the amount they are seeking for rent from \$581.00 as per the application to \$149.00 as payments have been made.

### **Issues before the Tribunal**

7. The tenant is seeking:
  - Validity of the termination notice

8. The landlord is seeking:
  - An order for vacant possession of the rented premises
  - Rent paid \$149.00
  - Security deposit applied against monies owed \$300.00
  - Hearing expenses \$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 decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10; Statutory conditions, Section 19: Notice where failure to pay rent and Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy. Also, relevant and considered is Section 12-1 of the *Residential Tenancies Policy Manual*: Fees.

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

#### Relevant submission:

11. The landlord submitted a termination notice under Section 24; Notice where tenant contravenes peaceful enjoyment and reasonable privacy. The notice was dated for 1-November-2023, with a termination date of 7-November-2023 (LL#2).

#### Landlord's Position

12. The landlord's representative testified that complaints started to come in as soon as the tenant moved in the unit in June 2023. The landlord's representative stated that by the end of August they had complaints from 5 out of 9 other tenants in the row housing stating that their lives have been turned upside down. The landlord's representative stated that 3 sworn witness affidavits (LL#3) have been submitted to show the extent of the disturbances and audio has been submitted to support the claim. The landlord's representative states that the tenant has been interfering with the peaceful enjoyment and reasonable privacy of the other tenants and they are seeking to have the tenant evicted.
13. Witness affidavit #1: Witness 1 stated in a sworn affidavit that she has peace bond applications gone to the provincial court to protect herself and her son from the respondent. Witness 1 provided a police file number which was opened as a result of threats and harassment made towards her on the evening of 8-November-2023 around 6:30pm. Witness 1 states that late August the respondent's mother moved in the unit with her which created multiple disturbances and incidences consisting of fighting, yelling, screaming and police presence. Witness 1 stated that the respondent's dog would be left home alone in the back room at the back of the complex depriving her and her son of sleep.
14. Witness 2 affidavit: Witness 2 stated in a sworn affidavit that the disturbances started for her and her 2 young children around 24-August with the dog barking and whimpering all night and shortly after that when the respondent's mother and friend moved in with her, the disturbances escalated to include such things as music blaring until 3-4 a.m. Witness

2 stated that there is loud yelling noises almost every night and banging on the walls. Witness 2 testified that various threats have been made against her and she do not feel comfortable living in her own home.

15. Witness 3 affidavit: Witness 3 stated in a sworn affidavit that since the respondent moved into the unit, she has experienced detrimental side effects to her mental health stemming from threats of physical violence to threats of violence to her vehicle. Witness 3 stated that she is unable to sleep due to loud music all hours of the night. Witness 3 stated that the respondent brings known criminals around the unit causing fear and chaos for everyone in the building. Witness 3 testified that she has a court date scheduled for 24-January-2024 at 9:00am to have a peace bond issued against the respondent.

### Tenant's Position

16. The tenant did not dispute that she has contributed to the chaos that has been happening within the unit. The tenant stated that she has banged on walls but so has the other tenants. The tenant stated that she has made threats, but the other tenants have threatened her as well. The tenant stated that she is 7 years sober, and she stated that she does not do drugs and she do not party. The tenant stated that she gets angry easily and is attending anger management sessions which are helping. The tenant disputes having any association with known criminals and admits to allowing her mother and a friend to reside at the unit with her.

### **Analysis**

17. 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.**

18. 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.*

19. The tenant was given a termination notice on 1-November-2023 to vacate the premises on 7-November-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*.
20. Based on the landlord’s testimony and the sworn affidavits from 3 other tenants who reside at the row housing complex, I accept that the tenant and the people she allowed to reside at the unit with her are responsible for interfering with the peaceful enjoyment and reasonable privacy of the other tenants. The tenant did not dispute that there is chaos, however she emphasized that she does not believe that she is totally at fault for everything that has been happening. I accept that there is loud noise as a result of music blaring late at night and a dog constantly barking and whimpering. I accept that a Police file has been opened due to threats and based on the sworn affidavits, I believe that the other tenants are living in fear to the point that they feel the need for a peace bond. Furthermore, the tenant allowed unauthorized occupants to reside at the residence who also caused disturbances for the other tenants. For those reasons, I find that the tenant interfered with the peaceful enjoyment and reasonable privacy of other tenants of a property of which they form a part.
21. In accordance with the *Residential Tenancies Act, 2018*, I find that the tenant 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.
22. I find that the tenant should have vacated the premises by 7-November-2023.

## **Decision**

23. The landlord’s claim for an order for vacant possession of the rented premises succeeds.

## **Issue # 2: Rent Paid \$149.00**

### Relevant Submission

24. The landlord’s representative testified that rent is outstanding in the amount of \$149.00. The landlord submitted a rent ledger to support their claim (LL#4). See below:

DATE	RENT	DATE	PAYMENT	BALANCE
Balance @ April 30, 2023				0.00
May 1, 2023	0.00	May 31, 2023	149.00	(149.00)
June 1, 2023	730.00	June 19, 2023	581.00	0.00
		June 30, 2023	730.00	(730.00)
July 1, 2023	730.00	July 31, 2023	581.00	(581.00)
August 1, 2023	730.00	August 25, 2023	149.00	0.00
September 1, 2023	730.00	September 5, 2023	730.00	0.00
		September 29, 2023	149.00	(149.00)
October 1, 2023	730.00			581.00
November 1, 2023	730.00	November 1, 2023	149.00	1,162.00
		November 30, 2023	1,743.00	(581.00)
December 1, 2023	730.00			149.00
<b>TOTAL</b>	<b>5,110.00</b>		<b>4,961.00</b>	<b>149.00</b>
			<b>BALANCE @ December 1, 2023</b>	<b>149.00</b>

### Landlord's Position

25. The landlord's representative testified that rent is outstanding in the amount of \$149.00 for the month of December 2023.

### Tenant's Position

26. The tenant did not dispute the landlords claim for outstanding rent in the amount of \$149.00.

### **Analysis**

27. Section 19 of the *Residential Tenancies Act, 2018* states:

#### ***Notice where failure to pay rent***

**19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),**

*(b) where the residential premises is*

- i. rented from month to month,*
- ii. rented for a fixed term, or*
- iii. a site for a mobile home, and*

*the amount of rent payable by a tenant is **overdue for 5 days or more**, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.*

*(4) 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

28. The landlord's representative testified that there is outstanding rent in the amount of \$149.00 for the month of December 2023. The tenant did not dispute the landlord's claim for rent.

29. The rental ledger is amended to show a daily rate for December as this tribunal does not consider future rent (see below). I find that there isn't any outstanding rent up to the date of this hearing, 6-December. There was a credit of \$581.00 in the account at the end of November and after applying a daily rate of \$24.00 for December 1-6, there is still a credit in the account of \$437.00. See amended ledger below:

Rental Ledger 2023-1056-NL & 2023-1058-NL			
Date	Action	Amount	Total
November 30, 2023		Balance	-\$581.00
December 1-6, 2023	Rent due	\$144.00	-\$437.00

Daily rate:  $730 \times 12 \text{ mths} = \$8760$   
 $\$8760 / 365 \text{ days} = \$24.00 \text{ per day}$

30. I find that there is a credit of \$437.00 in the rental account as of 6-December-2023.

#### Decision

31. The landlord's claim for rent paid in the amount of \$149.00 does not succeed.

#### Item # 2: Hearing Expenses \$20.00

32. The landlord paid an application fee of \$20.00 to *Residential Tenancies*. The landlord provided a copy of the application receipt (LL#5).

33. In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*, if an award does not exceed the amount of the security deposit, hearing expenses related to the filing fee will not be awarded. As the landlord's claim has been partially successful, and no amount has been awarded, the filing fee will not be awarded.

34. I find that the tenant is not responsible for the hearing expenses claimed.

#### Decision

35. The landlord's claim for hearing expenses in the amount of \$20.00 does not succeed.

#### Issue # 4: Security Deposit applied against monies owed \$300.00

#### Analysis

36. Section 14 of the *Residential Tenancies Act, 2018* states:

## **Security deposit**

14. (8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.
- (9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.
- (10) Where a landlord believes he or she has a claim for all or part of the security deposit,
  - (a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or
  - (b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.
- (11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).

37. The landlord's claim for losses has not been successful as per paragraph 31, and as such there is no claim to apply the security deposit against.

### **Decision**

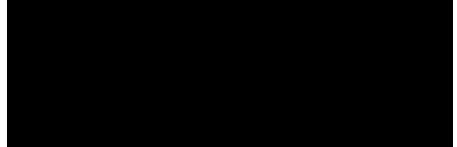
38. The landlords claim for security deposit to be applied against monies owed does not succeed.

### **Summary of Decision**

39. The termination notice is a valid notice.
40. The tenant shall vacate the premises immediately.
41. 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.
42. The landlord will be awarded an Order of Possession.

December 8, 2023

Date

  
Pamela Pennell  
Residential Tenancies Office