

Residential Tenancies Tribunal

Application 2023-1126-NL

Decision 23-1126-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 14-December-2023.
2. The applicant, [REDACTED] hereinafter referred to as the landlord, attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as the tenant, did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing. I called the tenant, he acknowledged his identity, and I advised him of the hearing. At this point the tenant seems to have hung up the phone. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as they have been properly served. The landlord submitted an affidavit (LL#3-1) with their application stating that they had served the tenant with notice of the hearing both personally and electronically, using the address the tenant had provided for communication. Additional evidence was provided to support the affidavit (LL#3-2, LL#3-3, and LL#3-4). As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issues before the Tribunal

5. Should the landlord be granted an order of vacant possession?

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.

Analysis

8. In order to receive an order for vacant possession, a landlord have issued a valid termination notice. In order to be valid, a termination notice must comply with the *Act*.

9. On 15-November-2023, the landlord issued a termination notice (LL#2). This notice is in writing in the form prescribed by the minister, it contains the name and address of the tenant, it identifies the residential premises for which it is given, and it identifies itself as a notice under s. 24 of the *Act*. It therefore complies with s. 34 of the *Act*.

10. LL#2 is also signed by the landlord and states the date on which the rental agreement will terminate and the tenant is required to vacate, 21-November-2023. The landlord testified that she served it by sliding it under the tenant's door and texted him to make sure it was there. This is valid service under s. 35(2)(d) of the *Act*. The notice is therefore in compliance with s. 24(2) of the *Act*.

11. LL#2 gives a termination date of 21-November-2023 and was issued on 15-November-2023. This means the termination date is exactly five clear days after the date it was issued, as required under s. 24(1).

12. Finally, for the termination notice to be valid, it must be proven on a balance of probabilities that the tenant violated statutory condition 7(a), listed under s. 10 of the *Act*, which reads 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.

13. The landlord testified that very shortly after the tenancy started, she realized she should discuss the matter with her insurance company. They advised her they would require an additional monthly fee and would need to speak with the tenant to ensure the landlord was covered. She agreed to pay the charge and asked the tenant to call the insurance company. She says the tenant first agreed to do so but has since refused. This does not constitute an unreasonable interference with the rights or reasonable privacy of the landlord. While the result may put the landlord in a difficult position, the tenant is not required to comply with this request.

14. The landlord testified that the tenant has been late with rent. This may be the basis for an eviction notice under s. 19 of the *Act*, but not s. 24.

15. The landlord testified that the tenant lied to her about a number of things, such as his profession. This is not interference with peaceful enjoyment.

16. The landlord testified that she does not feel safe in the home with the tenant there. This is a serious concern. When asked what causes her to feel that way, the landlord pointed to a number of comments from the tenant along the lines of “don’t f-ing message me again,” “I don’t need an old lady telling me what to do,” and “I don’t need to be babysat.” While these comments are certainly rude, they are not directly or indirectly threatening and I cannot see them constituting the basis of a serious safety concern to the point of interfering with the landlord’s right to peaceful enjoyment.

17. The landlord testified that the tenant has a habit of using the unit’s washer and dryer at 1:30 a.m., which causes significant noise where she lives upstairs. This is interference with the landlord’s right of peaceful enjoyment but is not necessarily unreasonable. People have different schedules and may need to use such appliances at different times, particularly those individuals who work outside of normal business hours.

18. The landlord testified that the tenant regularly smokes in the premises, both tobacco cigarettes and marijuana. She says this results in a terrible smell throughout her residence. The smoke causes the landlord to have sneezing fits. She says she has asked the tenant not to smoke in the premises, but he refuses, despite agreeing not to in the initial rental agreement. She says she has bought air fresheners to try to reduce the smell, but it has not helped. This constitutes interference with the landlord’s right to peaceful enjoyment.

19. The landlord testified that the tenant frequently makes loud, disruptive noises during the day. In particular, he plays music so loud that she can “hear the vibrations” and often yells loudly at his partner early in the morning, and that this yelling frequently includes foul language. She says neighbours have made comment about this and she feels responsible. She also says it is disruptive to her own life.

20. The landlord testified that the tenant has caused her problems by leaving his refuse out on the lawn. She alleges that he refuses to put his garbage in a bin or take it to the curb for municipal garbage pickup and has left numerous cigarette butts throughout the lawn. Pictures (LL#4-3 to LL#4-6) were provided in support of these claims. The garbage issue troubles her particularly, as it can attract scavengers and she is concerned this will lead to a rodent infestation. Already she has been awakened by the noise of crows picking through the unsecured garbage.
21. Based on the evidence in its totality I am satisfied on a balance of probabilities that the tenant has unreasonably interfered with the landlord's rights and has therefore violated statutory condition 7. The termination notice is valid.

Decision

22. As the termination notice in LL#2 was valid, the tenancy terminated on 21-November-2023. Insofar as the tenant is still residing on the premises, he is doing so illegally. The landlord's application for an order of vacant possession succeeds.
23. As the landlord has succeeded in their claim, the tenant shall pay the \$20 application fee.
24. As the tenancy has ended, the security deposit must be dealt with. The landlord may deduct the \$20 hearing fee from the security deposit.

Summary of Decision

25. The tenant shall vacate the premises immediately.
26. 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.
27. The landlord is granted an order of possession.
28. The landlord shall retain \$20 of the tenant's security deposit.

03-January-2024

Date

Seren Cahill
Residential Tenancies Office