

## Residential Tenancies Tribunal

Application 2023-1144-NL

Decision 2023-1144-NL

Michael Reddy  
Adjudicator

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### Introduction

1. The hearing was called at 9:01 AM on 10 January 2024 via teleconference.
2. The applicants, [REDACTED] hereinafter referred to as “landlord1”, and [REDACTED] hereinafter referred to as “landlord2”, attended the hearing. The landlords called a witness, [REDACTED] hereinafter referred to as “the landlord witness”.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant”, attended the hearing. The respondent called a witness, [REDACTED] hereinafter referred to as the “tenant witness”.
4. The details of the claim were presented as a verbal monthly rental agreement with rent set at \$400.00 per month and due on the 1<sup>st</sup> of each month. There was no security deposit collected on this tenancy prior to or after the tenant moved into the rental property in March 2016. The landlords issued a termination notice dated 29 November 2023 for the intended termination date of 5 December 2023 under Section 24 of the *Residential Tenancies Act*, 2018.
5. In a proceeding under the Residential Tenancies Act, 2018, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the standard of proof is referred to as the balance of probabilities which means the applicant has to establish his/her account of events are more likely than not to have happened.

### Preliminary Matters

6. The landlords submitted an affidavit (**Exhibit L # 1**) with their application stating that landlord1 served the tenant with notice of the hearing on 20 December 2023 via registered mail [REDACTED]
7. The landlords are seeking an order of eviction and an order of possession of property of the rental address of [REDACTED]

8. The landlords did not amend their application during the hearing and were seeking an order of vacant possession and hearing expenses.

### **Issues before the Tribunal**

9. The landlords are seeking the following:
  - An order for vacant possession of the rented premises
  - Hearing expenses

### **Legislation and Policy**

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*
11. Also relevant and considered in this case are the following sections the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Section 24: Notice where tenant contravenes peaceful enjoyment and peaceful enjoyment, along with Sections 34 and 35, along with Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expenses, Interest, Late Payment and NSF*.

### **Issue 1: Vacant Possession of Rented Premises**

#### Landlord Position

12. Landlord1 offered testimony the tenant had initially moved into apartment [REDACTED] NL in approximately March 2016. Landlord1 stated there was originally an oral agreement in place which did not include a security deposit and a monthly rental amount of \$400.00 due on the 1st day of each month. This rental amount does not include any utilities and the tenant remains in the property on the date of the hearing (10 January 2024). Landlord1 described the rental unit as being an apartment [REDACTED] and the tenant occupies the rental on the [REDACTED] of the property. There is a shared common law area which different tenants use for storage.
13. Landlord1 stated there have been recent actions of the tenant that has impacted on the peaceful enjoyment of other tenants in the rental and of the landlords which included a situation where the tenant had "flicked paint" on another tenant's vehicle which has resulted in that tenant no longer parking in the identified rental parking location.
14. Landlord1 stated on 28 July 2023, he had been contacted by another tenant in the property, who advised that her window was covered and she could not see out of the front window. Landlord1 attending the [REDACTED] and removed the item covering the other tenant's front window. An hour later on that date, landlord1

stated the respondent contacted him by telephone, asking why the item was removed. Landlord1 testified that the tenant suggested, "Why did you move the milk crates. I put it there so she could not view our steps".

15. Landlord1 stated on 4 September 2023, he was contacted by the tenant in relation to a dispute between himself and two other tenants of [REDACTED]. Policing authorities were said to have been involved in this situation.
16. Landlord2 offered testimony that the majority of interactions they have with the tenant results in the tenant becoming verbally abusive towards the landlords, other tenants of building and employees of the landlords.
17. The landlord witness testified he has been the contractual repair person for the landlords for the past eight years and he has regularly attended [REDACTED] to perform any repairs required. The landlords witness stated in November 2023, the tenant had requested for minor repairs to be completed which involved changing the electrical outlet in the rental. The landlords contacted the witness to complete this repair. Upon arrival at [REDACTED] the landlord's witness stated the tenant asked him if he was qualified to perform the repairs by asking, "What are your qualifications?" and "Are you a qualified electrician?". The witness stated after being verbally confronted by the tenant, he left.
18. Landlord1 testified that the tenant had made requests for repairs in the rental unit which they would respond to by sending the witness to perform the repairs. His concern was that upon arriving at the rental, the witness was being verbally challenged by the tenant while attempting to complete repairs required and requested by the tenant.
19. The landlords issued the tenant a Landlord's Notice to Terminate Early- Cause on 29 November 2023, to move out of the residential property by 5 December 2023 (**Exhibit L # 2**).
20. Landlord1 testified a "grounds keeper" they employed for lawn, garden and clean-up work at the rental property attended [REDACTED] to insulate water lines in preparation for the winter season. At that time, the grounds keeper, who all tenants recognized, accessed the crawl space of the building, at which time the tenant approached the grounds keeper. Landlord1 stated the tenant stated to the grounds keeper, "get out of my fucking basement" which resulted in the grounds keeper leaving. Landlord1 stated this was not the basement of the tenant, rather a common space of the building.
21. The landlord witness stated on 8 January 2024, he attended the rental property to complete repairs in the crawl space. The landlord witness stated the tenant entered the area and asked him for a flashlight and testified, "rather than have to deal with him, I called the landlords. He said I was nothing but a fucking drunk", which resulted in him leaving prior to finishing the repair.
22. Landlord2 suggested on 8 January 2024 both her and her husband attended [REDACTED] after the contractor had left. Landlord2 stated she and her husband were confronted by the tenant as he was suggesting, "he owns this property".

Following this, the police were called and she returned to her vehicle emotionally upset due to the actions of the tenant.

### Tenant Position

23. The tenant testified on 28 July 2023, he did cover the window of another tenant's rental property and described the items as being milk crates covered with a black mat. He stated he was not intending to block the window of the other tenant. In regards to paint being on another tenant's vehicle, the tenant stated he had been painting his porch at which time he struck his elbow on a wall which resulted in him kicking the paint can. He admitted paint being on the vehicle was the result of his actions, but described the owner as a visitor with another tenant of the building.
24. The tenant stated on 29 November 2023, he did question the landlord witness about his qualifications. The tenant also admitted to previously asking the contractor to borrow a step ladder
25. The tenant stated that he did not feel he had been provided adequate notice for the crawl space to be repaired. He testified for an extended period of time, he had been repairing the crawl space and felt he should have received notice that the repair man was going to be in the crawl space.
26. The tenant's witness described herself as a partner of the tenant and testified she was previously a tenant of [REDACTED] NL and had been evicted. She was of the opinion the actions of the tenant was not interfering on the peaceful enjoyment of the landlords or other tenants.

### **Analysis**

27. 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 conditions governing the residential premises apply:***

...

**2. Obligation of the Tenant-** *The tenant shall keep the residential premises clean, and shall repair damage caused by a willful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.*

...

**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 of the property of which they form a part.*

28. According to Residential Tenancies Policy 7-05 Peaceful Enjoyment, Interference of peaceful enjoyment is defined as, “an ongoing disturbance or activity, outside of normal everyday living, caused by the landlord or tenant. Peaceful enjoyment may include but is not limited to the following: (i) excessive noise; (ii) aggressive or obnoxious behavior; or (iii) threats and harassment.
29. I accept the testimony of the landlords that the tenant’s alleged actions are having a negative impact on the peaceful enjoyment of other tenants of [REDACTED]. [REDACTED] In addition to testimony offered by the landlords, there was also testimony provided by a witness, who stated the actions of respondent was having direct impact on his completion of repairs to the rental property. Testimony was offered that present two separate occasions when the tenant has impacted on employees of the landlords from accessing a common area of the rental property. Furthermore, I accept the testimony presented by the tenant that he verbally confronted the repair man, and impacted another tenant of the rental property by covering in her window. Not only is this an inconvenience to that tenant, but a potential safety hazard. As well, the tenant acknowledged that his actions while painting resulted in damage to a vehicle of another tenant and/or visitor of another tenant of the rental property.
30. The validity of the termination notice is determined by its compliance with the notice requirements identified in Section 24 and 34 as well as the service requirements identified in section 35.
31. Section 24 requires that when a premises is rented for month to month, the landlord can 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 serviced. On examination of the notice issued and submitted into evidence (**Exhibit L # 2**), I find the notice was served on 29 November 2023 with a termination date of 5 December 2023. The notice issued is in clear compliance with the requirements of section of section 18(2)(b). Sections 24(2) and 34 identify the technical requirements of the termination notice. On examination, I find that all the criteria have been met.
32. I find the actions of the tenant is having an impact on the peaceful enjoyment of other tenants at [REDACTED] NL and landlords of the rental.
33. It is for these reasons that I find there is sufficient evidence, as based on the balance of probabilities, for the landlord’s claim to succeed.

## **Decision**

34. The landlord’s claim for vacant possession succeeds.

## Issue 2: Hearing Expenses

35. The landlords paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (**Exhibit L # 3**). The landlords are seeking cost.

## Analysis

36. I have reviewed the evidence and testimony of the landlords in this matter. The expensed incurred by the landlords are considered a reasonable expense and are provided for with in *Policy 12-1 Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*. As the landlords claim succeeds, I find the tenant is responsible to cover reasonable expenses.

## Decision

37. The landlords are entitled to reimbursement of that cost from the tenant.

## Summary of Decision

38. The tenant shall vacate the premises immediately
39. 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.
40. The tenant shall reimburse the landlord the costs of the hearing expense \$20.00.
41. The landlord is granted an Order of Possession.

7 February 2024

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Date



Michael J. Reddy  
Residential Tenancies Office