

Residential Tenancies Tribunal

Application 2023-1181-NL

Decision 23-1181-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:02 a.m. on 18-January-2024.
2. The applicant, [REDACTED] Investments Inc., represented by [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant” attended by teleconference.
4. The respondent submitted an authorized representative form (TT#01) naming [REDACTED] [REDACTED] she attended by teleconference.
5. The landlord called two witnesses, [REDACTED] and [REDACTED]

Preliminary Matters

6. The landlord submitted an affidavit (LL#01) stating that she served the tenant with notification of today’s hearing electronically on 15-December-2023. The landlord and authorized representative both confirm notification.

Issues before the Tribunal

7. The landlord is seeking:
 - Vacant possession of rental premises

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 and Section 35: Service of documents.

Issue 1: Vacant Possession of the Rental Premises

Landlord's position

10. The landlord submitted the term rental agreement held with the tenant (LL#02). The tenant lived at the apartment building prior to the purchase of the property three years ago. They signed a recent term agreement on 01-June-2023 – 31-May-2024. The tenant pays \$955.00 rent a month which includes the cost of heat and light. The rental period is from the first day of the month until the last. Rent is due in full on the first day of the month. The tenant paid a \$475.00 security deposit to the previous owner of the building and the current owner has possession of this deposit.
11. The landlord submitted a termination notice (LL#03) that they served to the tenant. The notice is a Section 24 notice (LL#03) and it is in letter form. The landlord sent proof that the notice was sent to the tenant by email on 11-December-2023 at 4:36 p.m. It is signed and dated for 11-December-2023 with a termination date of 17-December-2023.
12. The landlord said that there have been ongoing issues with the tenant, and she called her two witnesses to support this claim of interference with peaceful enjoyment and reasonable privacy.
13. The landlord states that the tenant's behavior is interfering with the peaceful enjoyment of the other tenants in the building and she is seeking vacant possession of the apartment.

Tenant's position

14. The tenant confirms the details of the rental agreement as stated by the landlord. He said that he first moved into the apartment in March 2009.

Analysis

15. In a claim of interference with peaceful enjoyment and reasonable privacy it is incumbent on the applicant, in this case the landlord, to show the cause for this termination. The landlord did provide witnesses and the tenant, with his authorized representative defended their side of the claim. Upon review of the evidence, the landlord's service of the termination notice came into question, and it is evident that the notice does not meet the service requirements for a Section 24 notice as follows:

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.*

Section 35 of the *Residential Tenancies Act, 2018*, states that when a notice is served electronically, it must be served before 4:00 p.m. or it is considered served the next day that is not a Saturday or a holiday. The landlord's notice to the tenant was served on Monday, 11-December-2023 at 4:36 p.m. This notice is therefore considered served as of Tuesday 12-December-2023. As follows:

Service of documents

35. (2) A notice or other document under this Act other than an application under section 42 shall be served by a landlord on a tenant by

- (a) giving it personally to the tenant;
- (b) giving it to a person 16 years of age or older who apparently lives with the tenant;
- (c) posting it in a conspicuous place on the tenant's residential premises;
- (d) placing it in the tenant's mailbox or under a door in the tenant's residential premises;
- (e) sending it to the tenant by prepaid registered mail or prepaid express post at an address
 - (i) provided by the tenant, or
 - (ii) where the tenant carries on business;
- (f) sending it electronically where
 - (i) it is provided in the same or substantially the same form as the written notice or document,
 - (ii) the tenant has provided an electronic address for receipt of documents, and
 - (iii) it is sent to that electronic address; or
- (g) sending it to the tenant by courier service at an address set out in paragraph (e).

.....

(6) For the purpose of this section, where a notice or document **is sent electronically, it shall be considered to have been served on the day it is sent, if the document is sent by 4 p.m., or the next day that is not a Saturday or holiday, if the document is sent after 4 p.m.**

- 16. Service on 12-December-2023 with a termination date of 17-December-2023, does not give the 5 days notice required in Section 24 of the *Residential Tenancies Act 2018*, as shown above in paragraph 15. As the notice does not meet the service requirements the testimony of the parties concerning the claim of interference with peaceful enjoyment and reasonable privacy will not be relevant in determining the validity of this notice.
- 17. I find that the termination notice served to the tenant with a termination date of 17-December-2023 does not meet the service requirements of the *Act* and is not valid.

Decision

18. The termination notice served to the tenant with a termination date of 17-December-2023 does not meet the service requirements of the *Act* and is not valid.

Summary of Decision

19. The termination notice served to the tenant with a termination date of 17-December-2023 is not valid.

January 22, 2024

Date



Jacqueline Williams, Adjudicator
Residential Tenancies Office