

## Residential Tenancies Tribunal

Application 2024-0001-NL

Decision 24-0001-00

Seren Cahill  
Adjudicator

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### Introduction

1. Hearing was held on 24-January-2024 at 2:01 pm.
2. The applicants, [REDACTED] and [REDACTED] hereinafter known as the landlords, appeared by teleconference.
3. The respondent, [REDACTED] hereinafter known as the tenant, also appeared by teleconference.

### Issues before the Tribunal

4. Should the landlord's claim for unpaid rent be granted?
5. Should the landlord be granted an order for 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 and referred to in this decision are sections 24 and 35 of the *Act*, 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.

#### **Requirements for notices**

##### **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: Rent**

##### Landlords' Position

- 8. The landlords submit that the tenant owes one month's rent for January in the amount of \$600.00.

##### Tenant's Position

- 9. The tenant submits that in regards to January's rent, one of the landlords told her "we'll talk about it later," which she took to mean the rent payment could be delayed. She also says the landlord had agreed to reduce rent for the month to \$500, which the landlord denies.

#### **Analysis**

- 10. This tribunal does not have the power to award future rent. Only rent for those days up to and including the date of the hearing are at issue.
- 11. The tenant owes the landlord for rent up to the date of the hearing, 24-January-2024. In order to calculate the total owed, we must know the daily rate. The correct formula for calculating the daily rate is found by multiplying the monthly rent by (12/365). Where, as in this case, the monthly rent is \$600, the daily rate is therefore ~\$19.73. Multiplying this by the 24 days of January which had occurred by the date of the hearing gives a total of \$473.42 owed.
- 12. For clarity, nothing in this decision negates the responsibility of the tenant to pay the remainder of the month's rent should she remain in the premises for the rest of the month.

## Issue 2: Vacant Possession

### Landlords' Position

13. The landlords submit that they have issued a valid termination notice, the tenancy has ended, and the tenants must vacate. They say the tenant has interfered with other tenant's right to peaceful enjoyment.

### Tenant's Position

14. The tenant denies having interfered with other tenant's rights and opposes the application for vacant possession.

### **Analysis**

15. In order to receive an order for vacant possession, a landlord must have first submitted a valid termination notice. The landlords submitted a termination notice (LL#1) dated 6-December-2023. To be valid, a termination notice must comply with every relevant provision of the *Act*.
16. LL#1 is in writing in the form prescribed by the minister. It contains the name and address of the recipient. It identifies the residential premises which it regards. It identifies itself as being issued under s. 24 of the *Act*. It therefore complies with s. 34 of the *Act*.
17. LL#1 has been signed by the landlords. It states the date the tenant is required to move out. It was served on the tenant by posting it to her front door in accordance with s. 35(2)(c) of the *Act*. It therefore complies with s. 24(2) of the *Act*.
18. LL#1 was issued on 6-December-2023. It gives a termination date of 15-December-2023. This gives more than 5 clear days' notice. The only remaining consideration is whether or not the tenant violated statutory condition 7(a) listed under s. 10(1) of the *Act*.
19. The landlords provided two affidavits from the tenant's neighbour and her mother. Affidavits are not as probative as witness testimony, as they are not subject to cross examination, but they are sworn statements and I accepted them into evidence as exhibits LL#2 and LL#3. The affidavits state that during a visit of the tenant to the neighbor's premises a conversation became heated and the tenant was asked to leave, but refused. They go on to say that the tenant committed an assault against the neighbor's mother. They say that police were called, charges were laid, and after the police left the tenant began to utter threats against the neighbour, her mother, and her daughter.
20. The tenant agrees that there was a physical altercation at the neighbour's house but denies having initiated it. She states that she was the victim of the assault and it was the tenant's mother who attacked her. She alleges that the affidavits are false and that the neighbour has been harassing her.
21. I do not find the tenant's testimony credible. Her responses were evasive. Her account contained internal inconsistencies and inconsistencies with other evidence presented.

For example, she claims the neighbour did not file a police report and implies they did not call the police, yet admits she was criminally charged in relation to the incident. There are holes in her story that she could not explain, such as what might have motivated the other party to attack her. In contrast, LL#2 and LL#3 are consistent with each other and all other evidence presented, save the tenant's testimony. They contain a cogent and believable account of what occurred, including how tensions escalated from a heated conversation to the tenant being asked to leave but refusing, to the neighbour's mother being called in response, to the tenant being confronted by the tenant's mother and assaulting her.

22. I accept on a balance of probabilities the evidence of the writers of the affidavits, that the neighbour's mother was assaulted by the tenant on their property, which she refused to leave despite being told to do so. Such behaviour constitutes interference with the rights of the neighbour to peacefully enjoy her property and control who may access it. However, statutory condition 7 is very specific. It reads:

*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.

(Emphasis mine).

23. In order to be in violation of this condition, a tenant must interfere with the rights or reasonable privacy of a landlord or another tenant in the residential premises, a common area, or the property of which they form a part. In this case it was made clear during the hearing that the tenant and the neighbour live in separate buildings separated by a driveway. Where the act says "in the residential premises" it means the residential premises that the application regards. The interference did not occur in the residential premises this application regards. The tenant claimed the driveway was exclusively hers to use, whereas the landlord said the driveway was shared between the tenant and the neighbour. I accept the landlords' account. As the property owner they are better able to define the boundaries and nature of the premises. The driveway is a common area, but by all accounts, the incident did not occur there, nor was direct evidence presented suggesting that the tenant's actions interfered with the neighbour's ability to peacefully enjoy this common area.
24. We must therefore consider whether, for the purposes of the *Act*, the two dwellings and the common driveway together form one property or a part of one property. The fact that they are rented separately has no bearing on this; landlords often rent multiple parts of one house or multiple apartments in one building, yet both examples form a part of one property. That the two rental premises have separate buildings may be a relevant consideration but is not necessarily determinative. The premises are both owned by the same landlords, they are contiguous, and they share parking space and access to the public road through a common driveway, similar in nature to how some larger commercial landlords rent multiple units which share a common parking area.
25. Having considered the above factors, I conclude that the two residential premises and the common driveway form one property or part of one property for the purposes of s.

10, statutory condition 7 of the *Act*. It follows that the tenant interfered with the neighbour's right to peacefully enjoy part of said property. As that interference was unreasonable, the tenant was in violation of statutory condition 7 and the termination notice is therefore valid.

### **Decision**

- 26. The tenant shall pay to the landlord \$473.42 in unpaid rent.
- 27. The termination notice dated 6-December-2023 is valid.
- 28. The tenancy was terminated on 15-December-2023.
- 29. Insofar as the tenant is still occupying the premises, she is doing so unlawfully.

### **Summary of Decision**

- 30. The tenant shall pay to the landlord \$473.42 in unpaid rent.
- 31. The tenant shall vacate the premises immediately.
- 32. The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sherriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession.
- 33. The landlord is granted an order of possession.

7-February-2024

Date

  
Seren Cahill  
Residential Tenancies Office