

## Residential Tenancies Tribunal

Application 2024-0008-NL

Decision 24-0008-00

Pamela Pennell  
Adjudicator

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### Introduction

1. Hearing was called at 9:13 a.m. on 9-February-2024.
2. The applicant, [REDACTED] represented by [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent, [REDACTED] herein referred to as "the tenant" did not attend.

### Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach him by telephone at the start of the hearing. 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 he has been properly served. The landlord submitted an affidavit with his application stating that he had served the tenant with the notice of hearing via pre-paid registered mail [REDACTED] on 12-January-2024 (LL#1). Canada Post tracking indicates that the mail was not retrieved. In accordance with the *Residential Tenancies Act, 2018* registered mail is considered served 5 days after it has been sent. 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 his absence.
5. The rental unit is a 3-story house which contains 3 separate units with a shared stairwell to each unit. The respondent resides in the middle unit on the main floor. There is a written month to month rental agreement which commenced on 1-November-2021. Rent is \$1700.00 per month due on the first of each month. A security deposit of \$850.00 was paid on 1-November-2021 and is still in the possession of the landlord.

### Issues before the Tribunal

6. The landlord is seeking:
  - An order for vacant possession of rented premises.

## Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 3 - Application of the Act; Section 10 - Statutory conditions; and Section 24 - Notice where tenant contravenes peaceful enjoyment and reasonable privacy.

## Issue # 1: An Order for Vacant Possession of Rented Premises

### Relevant submission:

9. The landlord submitted a copy of a termination notice given to the tenant under Section 24; Notice where tenant contravenes peaceful enjoyment and reasonable privacy. The notice was dated for 18-December-2023, with a termination date of 24-December-2023 (LL#2). The landlord testified that he served the termination notice to the tenant personally.

### Landlord's Position

10. The landlord testified that the tenant has interfered with the peaceful enjoyment of another tenant, and he has also interfered with his rights as a landlord which has caused him financial hardship. The landlord stated that he is unable to rent the other 2 units of the residential premises due to intimidation tactics on behalf of the tenant. The landlord testified that he had a new tenant who agreed to rent the top level of the unit, paid his security deposit and attempted to gain entry to his unit on 15-December-2023 but was unsuccessful. The landlord stated that when the new tenant arrived at the premises, he was unable to access his unit due to a locked gate that was installed by the tenant to block access. The landlord also stated that the new tenant left the premises and tried to regain entry again later, only to find the presence of a pitbull dog on the other side of the locked gate on the stairwell at the entrance to his unit. The landlord submitted a copy of a sworn witness affidavit from the new tenant to support his claim (LL#3). The landlord testified that he lost his new tenant and the rental income causing him financial hardship.

## Analysis

11. 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.

12. 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.

13. Section 3 of the *Residential Tenancies Act, 2018* states:

**Application of Act**

3. (3) The relationship of landlord and tenant shall be considered to exist in respect of residential premises where the tenant

(b) makes an agreement with the landlord by which the tenant is granted the right to use or occupy residential premises in consideration of the payment of or the promise to pay rent.

14. The tenant was given a termination notice on 18-December-2023 to vacate the premises on 24-December-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* as stated above. The termination notice meets the timeline requirements of the *Act*.
15. Based on the landlord’s testimony and the exhibit entered into evidence (witness affidavit), I accept that the tenant is responsible for interfering with the peaceful enjoyment of the new tenant who rented the upstairs unit in December but could not access it. According to Section 3 of the *Act* as stated above, the new tenant entered into an agreement with the landlord whereby he was granted the right to occupy the premises and he was unable to do so due to the actions of the tenant. A locked gate prohibiting entry to the stairwell and a pitbull dog in the stairwell were intimidating tactics that scared the new tenant off and ultimately interfered in his peaceful move in. I also accept that preventing the landlord from renting the other 2 vacant units in the rental premises causing him to lose rental income and ultimately endure financial hardship also falls under interfering with the rights of the landlord as stated in Section 7(a) above.
16. 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 does not meet the requirements of the *Act* and is not a valid notice.
17. I find that the tenant should have vacated the premises by 24-December-2023.

## **Decision**

18. The landlord's claim for an order for vacant possession of the rented premises succeeds.
19. The tenant shall vacate the premises immediately.
20. 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.

## **Summary of Decision**

21. The tenant shall vacate the premises immediately.
22. 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.
23. The landlord will be awarded an Order of Possession.

February 12, 2024

Date



Pamela Pennell  
Residential Tenancies Office