

Residential Tenancies Tribunal

Application 2024-0023-NL

Decision 24-0023-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 30-January-2024 at 2:01 pm.
2. The applicant, [REDACTED] hereinafter referred to as the landlord, was represented at the hearing by [REDACTED] who attended via teleconference.
3. The respondent, [REDACTED] hereinafter referred to as the tenant, also attended via teleconference, on behalf of himself and the other listed respondents, [REDACTED] and [REDACTED] who are his siblings. The tenant testified that the other respondents had not lived at the residence for some time but when he had attempted to have their names taken off the lease, the landlord refused.

Issues before the Tribunal

4. Should the landlord be granted an order for vacant possession?

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
6. 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: Vacant Possession of the Rental Premises

Landlord's Position

7. The landlord submitted that the tenant or a person the tenant had permitted to live in the apartment without the permission of the landlord has been disruptive to other tenants in the building by making noise, and that the termination notice was issued in response to several noise complaints.

Tenant's Position

8. The tenant submitted that he has taken all reasonable steps to respond to issues as soon as they have been brought to his attention, including removing the sublessee who had caused the noise. He admits he did not seek the landlord's permission to sublease the apartment but had assumed they would not cooperate due to their lack of cooperation with his previous attempt to reassess the lease.

Analysis

9. In order to receive an order for vacant possession, a landlord must have issued a valid termination notice. The landlord submitted a termination notice (LL#1) dated 11-December-2023. To be valid, a termination notice must comply with every relevant section of the Act.
10. 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.
11. 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 personally in accordance with s. 35(2)(a) of the Act. It therefore complies with s. 24(2) of the Act.

12. LL#1 was issued on 11-December-2023. It gives a termination date of 18-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*.
13. The landlord testified that they received noise complaints from other tenants on or about 2-August-2023, 11-November-2023, and 1-December-2024. No affidavits were submitted in support of this, nor was any witness testimony provided. No evidence was provided as to the extent or nature of how the noise interfered with the ability of other tenants to enjoy the residential premises, a common area, or the property of which they form a part.
14. The landlord has not provided sufficient evidence to establish a claim that the tenant was in violation of statutory condition 7 under s. 10 of the *Act*. It is therefore unnecessary to consider the tenant's evidence.

Decision

15. The termination notice dated 11-December-2023 is invalid.
16. The landlord's application for an order of vacant possession fails.

9-February-2024

Date

[REDACTED]
Seren Cahill
Residential Tenancies Office