

Residential Tenancies Tribunal

Application 2024-0029-NL

Decision 2024-0029-00

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:00 AM on 7 February 2024 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord”, attended the hearing. The landlord was represented by [REDACTED] hereinafter referred to as “the authorized representative” (**Exhibit L # 1**).
3. The respondent, [REDACTED] hereinafter referred to as “the tenant”, attended the hearing.
4. The details of the claims were presented as a verbal monthly rental agreement with rent initially set at \$800.00 due on the 1st of each month. There was no security deposit paid on this tenancy. The tenant moved into the two-bedroom house at [REDACTED] on 15 September 2023 and remains in the property on the date of the hearing (7 February 2024).
5. The landlord issued a termination notice on 29 December 2023 to terminate the tenancy on 8 January 2024 under both section 19 and section 24 of the *Residential Tenancies Act*, 2018 (**Exhibit L # 2**). The tenant was served in person (**Exhibit L # 3**) an application for dispute resolution on 25 January 2024 at the rental address.
6. 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 outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

7. The landlord confirmed his application at the hearing and was only seeking vacant possession.

8. The landlord offered testimony during the hearing and had an authorized representative, who offered testimony.
9. The tenant offered testimony during the hearing and did not call any witnesses.

Issues before the Tribunal

10. The landlord is seeking the following:
 - An order for vacant possession of the rented premises.

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act*, 2018
12. Also relevant and considered in this case is S. 14, 19, 24, 34, 35, and 42 of the *Residential Tenancies Act*, 2018.

Issue 1: Vacant Possession of Rented Premises

Landlord position

13. The landlord stated that there is a verbal monthly rental agreement established with the tenant, who had moved in with him and has occupied the rental premises since 15 September 2023. The landlord testified the tenant initially did not pay rent as there was a verbal agreement that the tenant could reside at the property, along with the tenant's son, while the tenant completed repairs of the rental property. The landlord stated in November 2023, the tenant was requested to start paying rent in the amount of \$800.00. The landlord also expressed concerns for his personal safety due to the behaviors of the tenant.
14. The landlord's representative testified that the tenant had been issued a rental agreement with the identified monthly rent of \$800.00.
15. The landlord offered evidence that the tenant was issued a Landlord Notice to Terminate Early-Cause under both section 19 of the *Residential Tenancies Act*, 2018, in relation to non-payment of rent, and under section 24 of the *Act*, citing interference with peaceful enjoyment. The termination notice is dated 29 December 2023, requesting the tenant to be out of the rental home by 8 January 2024 (**Exhibit L # 2**).
16. The landlord stated the tenant remains in the rental address on the date of the hearing (7 February 2024).

Tenant Position

17. The tenant did not dispute he was served the Application for Dispute Resolution as indicated by the landlord. He testified he moved into the rental address on 15 September 2023 with an agreement to complete repairs of the rental. The tenant stated in November 2023, he had conversations with both the landlord and landlord representative about a rental agreement and since that time, has not paid any amount of rent to the landlord.
18. The tenant testified he “has not paid rent in cash” and disputed being aggressive towards the landlord.

Analysis

19. The landlord submitted termination Notice under Section 19 and Section 24, in relation to the tenant’s failure to pay rent and interference on the landlord’s peaceful enjoyment of the property (**Exhibit L # 2**). In accordance with Residential Tenancies Program Policy 7-001, “more than one authority may be cited for issuing a termination notice. If the notice citing more than one authority is contested, the person issuing the notice is only required to prove the validity of one of the applicable sections”.
20. Section 19 of the *Residential Tenancies Act*, 2018 states:
 - a. **Notice where failure to pay rent**
 - b. **19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),**
 - i. **(b) where the residential premises is**
 - (i) **rented from *month to month*,**
 - (ii) **rented for a fixed term, or**
 - (iii) **a site for a mobile home, and**
 - c. **the amount of rent payable by a tenant is *overdue for 5 days or more*, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.**
 - i. **(4) 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.**

21. The tenant had been in rental arrears in excess of 5 days when the notice was served on 29 December 2023 to be out of [REDACTED] NL on 8 January 2024. Upon review of the termination notice under section 19, I observe there is not 10 clear days as required by the *Act* after the notice was issued. The notice under section 19 fails.
22. Upon review of the Section 24 termination notice (**Exhibit L # 2**), the landlord testified during the hearing of having his personal safety threatened by the tenant. Along, with his application, the landlord also provided evidence from his counsellor indicating concerns with the impact of the tenant's behaviour on the landlord's wellbeing (**Exhibit L # 4**).
23. Along with his testimony, the landlord also submitted evidence with his application of the tenant being verbally hostile towards him (**Exhibit L # 5**).
24. The authorized representative offered testimony that the tenant was having a negative impact on the landlord's wellbeing and mental health.
25. Statutory conditions 6 and 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:*

...

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.

26. 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.
27. I accept the testimony of the landlord and the authorized representative that the tenant's alleged actions are having a negative impact on the peaceful enjoyment of his residence. I also review a piece of evidence (**Exhibit L # 4**) from a medical professional, who is of the opinion the tenant's actions are having a negative impact on the landlord. Along with his application, the landlord provided a piece of evidence (**Exhibit L # 5**) revealing an interaction between himself and the tenant and the tenant being verbally hostile towards the landlord.

28. 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.
29. 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 December 2023 with a termination date of 8 January 2024. 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.
30. It is for these reasons that I find there is sufficient evidence for the landlord's claim to succeed under section 24.

Decision

31. The landlord's claim for an order for vacant possession does succeed.

Summary of Decision

32. The landlord is entitled to the following:
- An order for vacant possession of the rented premises,
 - The tenant shall also 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.

5 March 2024

Date


Michael J. Reddy
Residential Tenancies Office