

Residential Tenancies Tribunal

Application 2024-0069-NL

Decision 24-0069-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 20 March 2024 via teleconference.
2. The applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as "the landlord", attended the hearing. The landlord did not call any witnesses.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not attend the hearing, nor was she represented.

Preliminary Matters

4. The tenant was not present or represented at the hearing. On the date of the hearing at 9:07 AM, an attempt was made to contact the tenant by telephone at [REDACTED] which was unsuccessful. 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 she has been properly served. The landlord submitted an affidavit (**Exhibit L # 1**) with his application stating that he served the tenant via registered mail ([REDACTED]) with notice of the hearing on 1 March 2024 at approximately 5:00 PM. 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 her absence.
5. The landlord is seeking an order of eviction and an order of possession of property of the rental address of [REDACTED].
6. The landlord did not amend his application during the hearing.

Issues before the Tribunal

7. The landlord is seeking the following:
 - An order for vacant possession of the rented 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 case are the following sections the *Residential Tenancies Act*, 2018: Section 10: Statutory conditions, Section 24: Notice where tenant contravenes peaceful enjoyment and peaceful enjoyment, along with Sections 34 and 35.

Issue 1: Vacant Possession of Rented Premises

10. The landlord offered testimony the tenant was an occupant of the rental unit prior to the rental property being purchased in 2018. The landlord stated there was an oral agreement in place which did not include a security deposit and a monthly rental amount of \$500.00 due on the 1st day of each month. This rental amount does not include any utilities and the tenant remains in the property on the date of the hearing (20 March 2024).
11. The landlord offered testimony the tenant occupies a one-bedroom apartment next to another apartment and there was water leak in the common-area of the rental which resulted in the flooring of both rental units having to be replaced.
12. The landlord stated in March 2023, he had contacted a water heating contractor who attended the rental property and determined the water heater was leaking and caused flooring damages. The landlord described the water heater as being, "in the middle of the house" and not inside the tenant's apartment.
13. The landlord during the hearing testified there was damages to the floors of both apartments in the rental. Along with his application, the landlord offered evidence of the common area of the rental (**Exhibit L # 2**) which shows damaged flooring outside of the tenant's apartment.
14. After the water damages, the landlord stated there were concerns with rodents being inside the rental and testified he had contacted a pest control contractor who informed the landlord that entry into the tenant's rental was required to deal with the rodents.
15. The landlord testified after the water damage and rodent problem he had contacted the tenant on multiple occasions to inform her she would have to move out as repairs were

required. He stated the tenant had informed him that she would move to another residence, but never moved.

16. The landlord stated after the tenant did not move out, on 15 March 2023, he issued the tenant a Landlord's Notice to Terminate- Standard with a request for her to be out by 30 June 2023 (Exhibit L # 3). The tenant did not vacate the property in relation to this notice.
17. The landlord testified the tenant has not permitted entry into the rental unit following the water damage. He stated during the hearing he, "did not request formal entry into her apartment, we only asked her to move out".
18. The landlord stated on 19 January 2024, he issued the tenant a Landlord's Notice to Terminate Early- Cause (Exhibit L # 4) with a request for her to be out of the residence by 25 January 2024. As of the date of the hearing (20 March 2024), the landlord believes the tenant is not staying at the rental but using it as storage of her personal belongings. There was no evidence offered about this claim.

Analysis

19. While the landlord issued a section 18 notice in March 2023 requesting the tenant to be out of the rental by June 2023, this application will only adjudicate the section 24 notice issued to the tenant in January 2024.
20. 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 conditions governing the residential premises apply:

...

2. Obligation of the Tenant- The tenant shall keep the residential premises clean, and shall repair damage caused by a willful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

...

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.

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.

21. I accept the testimony and evidence that the landlord issued the tenant a section 24 notice on 19 January 2024.
22. 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.
23. 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 # 4), I find the notice was served on 19 January 2024 with a termination date of 25 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, and on examination, the required timelines were met with this notice.
24. The question in this situation is if the tenant's actions interfere with the peaceful enjoyment of the landlord or other tenants. The landlord with his application, did not provide any evidence that the tenant caused the damage to the water heater or the subsequent damage to the flooring. Nor was there evidence demonstrating that her actions impacted on the other tenants of the rental property and/or the landlord. Further, there was no evidence presented to demonstrate that the tenant unreasonably interfered with the landlord's right to entry as the landlord testified during the hearing that formal entry into the tenant's apartment for repairs to be completed was never issued; and nor was evidence presented to demonstrate the tenant's denial of entry into the residence.
25. It is for these reasons that I find there is insufficient evidence for the landlord's claim to succeed.

Decision

26. The landlord's claim for vacant possession fails.

25 April 2024

Date

Michael J. Reddy
Residential Tenancies Office