

Residential Tenancies Tribunal

Application 2024-0089-NL

Decision 24-0089-00

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 14 February 2024 via teleconference.
2. [REDACTED] hereinafter referred to as "landlord1", attended the hearing. [REDACTED] hereinafter referred to as "landlord2", did not attend the hearing.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant", did not attend the hearing, nor was she represented.

Preliminary Matters

4. Prior to the hearing, I attempted to contact the respondent by telephone at [REDACTED] at which time I 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 applicants provided an Affidavit of Service demonstrating that the respondent was served electronically a Notice of Hearing via electronic mail address on 2 February 2024 at approximately 3:11 PM (**Exhibit L # 2**). 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. Landlord1 confirmed the application seeking to have their premises vacated and compensation paid for inconvenience in the amount of \$1029.58; and amended to include cost of hearing fees in the amount of \$20.00.
8. 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 outcomes 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.

Issues before the Tribunal

9. The landlord is seeking the following:

- An order for vacant possession of the rented premises;
- An order for compensation for inconveniences of \$1,029.58; and,
- Hearing expense in the amount of \$20.00

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act*, 2018
11. 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, and Policy 03-002 of the *Residential Tenancies Program*.

Issue 1: Vacant Possession of Rented Premises

12. Landlord1 offered testimony the tenant had initially moved into the main floor three-bedroom apartment on 1 December 2022. Landlord1 stated there is a written monthly (**Exhibit L # 3**) agreement in place which did include a security deposit collected on 18 November 2022 in the amount of \$1,500.00 and a monthly rental amount of \$2,000.00 due on the 1st day of each month. This rental amount includes heat and light, internet and television, and the tenant remains in the property on the date of the hearing.
13. Landlord1 offered testimony the tenant had contacted them via text message on January 12, 2024 stating she was terminating her rental agreement on 15 February 2024. Landlord1 offered evidence along with his application indicating that he notified the tenant 12 January 2024, he wished to enter the rental unit on 27 January 2024 for another potential tenant (**Exhibit L # 4**). The tenant replied on 12 January 2024 she would permit entry. On 26 January 2024, after the landlord had sent a reminder text, the tenant replied she was refusing entry (**Exhibit L # 5**).
14. The landlords had issued the tenant a Landlord's Notice to Terminate Early- Cause, citing interference with peaceful enjoyment and reasonable privacy, on 26 January 2024 via electronic mail with a request for the tenant to be out of the rental property by 1 February 2024 (**Exhibit L # 1**).
15. Landlord1 testified on 27 January 2024 at approximately 11:45 AM, he attended the rental unit to show the apartment to another potential tenant. At that time, the tenant refused the landlord entry into the unit. Landlord1 stated policing authorities were involved in the situation (**Exhibit L # 6**) on 27 January 2024 and he was not granted entry to the rental unit.

16. Landlord1 offered testimony during the hearing that when he attended [REDACTED] NL on 27 January 2024, he observed the lock of the door of the main entry had been changed. He also offered there was no prior notice of the tenant informing she would be changing the lock to the entry way and landlord1 did not have the pass code of the lock.

Analysis

17. Upon review of the notices issued by the landlords to the tenant, I observe the first notice by the tenant stating she would be out of the rental by 15 February 2024.

18. As the landlords issued the tenant a notice following the tenant issuing a notice, the question now is the validity of the landlord's notice issued on 26 January 2024 requesting the tenant to be out by 1 February 2024 (**Exhibit L # 1**).

19. Sections 34 and 35 of the *Residential Tenancies Act, 2018* clearly identifies requirements of notices. As stated:

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; &*
- d) *State the section of this Act under which the notice is given*

Upon review of the landlords Notice to Terminate Early- Cause (**Exhibit L # 1**), I see all these criteria has been met.

20. Consideration of section 35 also has to be reviewed. As specified in the Act:

Service of Documents

35. (2) A notice or other document under this Act other than an application under section 42 shall be served by a landlord on a tenant by
...
(f) sending it electronically where (i) it is provided in the tenant, or (ii) where the tenant carries on business.

21. Along with their application, the landlords provided the e-mail sent to the tenant indicating on 26 January 2024 at 3:15 PM the Landlord's Notice to Terminate Early- Cause was e-mailed to the tenant (**Exhibit L # 7**) which meets the criteria for appropriate service of the notice.

22. The landlords had provided a notice to the tenant in the identified requirements and means of service under the Act. They issued the Notice to Terminate Early- Cause under section 24.

23. Section 24 of the *Act* identifies that, “*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*”. This timeline was met by the notice.
24. The question is what constitutes interference of peaceful enjoyment? The *Act* suggests:

10. 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.*
25. Further clarification is offered by 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.
26. I do accept the testimony of landlord1 that the landlords provided notice of entry of the residential premises as per section 10(1)5 of the *Act* (see below), and that the tenant unreasonably refused entry into the premises.

Statutory conditions

10 (1)

(5) *Entry of Residential Premises - Except in the case of an emergency, the landlord shall not enter the residential premises without the consent of the tenant unless*

(a) notice of termination of the rental agreement has been given and the entry is at a reasonable time for the purpose of showing the residential premises to a prospective tenant or purchaser and a reasonable effort has been made to give the tenant at least 4 hours' notice;

...

27. I also accept the testimony of landlord1 that the tenant had changed the entry code/lock of the rental unit without his knowledge. This situation falls under the statutory conditions of the *Residential Tenancies Act, 2018*. As indicated:

Statutory conditions

10.

...

(6) Entry Doors- Except by mutual consent, neither the landlord or the tenant shall, during the use or occupancy of the residential premises by the tenant, alter a lock or locking system on a door that gives entry to the residential premises.

28. Landlord1 was not aware of the pass code of the entry to the rental unit. This is breach of a statutory condition of the rental agreement.
29. The termination notice issued by the landlords to the tenant was a 5-day notice in relation to section 24. I do find the actions of the tenant unreasonably interfered with the rights of the landlord.

Decision

30. The landlords claim for vacant possession succeeds.

Issue # 2: Inconveniences of \$1,028.58

31. Landlord1 was seeking compensation for inconveniences in the amount of \$1,028.58. Along with their application, they provided a breakdown of those costs which identified \$23.00 per hour of time, along with a rate of 68 cents per kilometer (**Exhibit L # 8**)
32. Landlord1 further broke down the inconveniences as follows:

Description	Identified Unit	Cost
Travel b/t Gander and Paradise- Time	7 hours	\$161.00
Distance b/t Gander and Paradise- Kilometers	656 kilometers	\$446.08
Setting up viewings of potential tenants	3 hours	\$69.00
Time speaking with police authorities	1 hour	\$23.00
Time speaking to Tenancies Board	1 hour	\$23.00
Locksmith fee	Service charge	\$287.50
Hearing Expense	Application fee	\$20.00

Analysis

33. Although the landlords claim for vacant possession fails, I accept the testimony of landlord1 that there was a need to contact a locksmith. Section 47(1) of the *Residential Tenancy Act* is clear that:

Order of Director

47. (1) After hearing an application, the director may make an order(a) determining the rights and obligations of a landlord and tenant; (b) directing the

payment or repayment of money from a landlord to a tenant or from a tenant to a landlord

34. The evidence does demonstrate that the tenant violated a statutory condition under the Act of changing the locks.
35. In relation to the landlords claim for compensation for costs of setting up viewings, travel to and from the rental unit, along with time spent speaking with the tenancy board and police, I consider those activities actions requirements of renting property.

Decision

36. The landlords request for compensation for inconveniences succeeds in the amount of **\$287.50**.

Issue # 3- Hearing Expense

37. The landlords, along with their application, provided a copy of the hearing receipt (**Exhibit L # 9**).

Decision

38. The landlords request for hearing expenses succeeds.

Summary of Decision

39. The landlords claim for vacant possession and hearing expenses succeed.

40. The landlords are entitled to a payment of **307.50** as follows:

- Inconveniences.....\$287.50
- Hearing Expenses.....\$20.00
- Total.....**\$307.50**

21 March 2024

Date

Michael J. Reddy
Residential Tenancies Office