

Residential Tenancies Tribunal

Application 2024-0101-NL

Decision 24-0101-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:13 a.m. on 21-February-2024.
2. The applicant, [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 her 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 she has been properly served. The landlord submitted an affidavit with her application stating that she had a friend serve the tenant with the notice of hearing personally at the residential premises on 8-February-2024 (LL#1). In accordance with the *Residential Tenancies Act, 2018* this is good service. 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 rental unit is an apartment within a quadplex with shared spaces outside. There is a written month to month rental agreement which commenced on 1-November-2021. Rent is \$750.00 per month due on the first of each month. A security deposit was never received.

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 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 15-January-2024, with a termination date of 21-January-2024 (LL#2). The landlord testified that she served the termination notice to the tenant personally.

Landlord's Position

10. The landlord stated that the tenant has interfered with the peaceful enjoyment of 2 other tenants within the quadplex, and an elderly neighbor. The landlord stated that the tenant has also interfered with her rights as a landlord which has caused her emotional hardship. The landlord testified that the behavior of the tenant is ongoing since the summer of 2023 and on 26-October-2023 at approximately 11:30pm there was an incident whereby the *Police* had to be called after one of the other tenants heard a series of loud banging noises coming from outside her apartment door and witnessed a person wearing a hard hat and carrying a hammer on the premises who caused damage to her doorbell camera. The landlord stated that the tenant's son told the second tenant that his mom was responsible for the damage to her doorbell camera. The landlord submitted a copy of a witness statement from the second tenant to support her claim (LL#3). The landlord stated that she also received complaints from a third tenant in the quadplex about the tenant's behavior and how she continuously disrupts her peaceful enjoyment by screaming and throwing things around on the property. The landlord stated that the third tenant also complained of things being thrown around in the tenant's unit which happens quite often and during all hours of the day or night. The landlord submitted a witness statement from the third tenant to support her claim (LL#4). In addition to disturbing the tenants in the quadplex, the landlord stated that she also receives complaints from a close neighbor who is elderly and sick. The landlord stated that the neighbor has received a threatening voicemail message from the tenant, and the landlord submitted a copy of the audio to support her claim (LL#5). The landlord testified that the tenant also interfered with her rights as a landlord and made threatening remarks to her on 15-January-2024 when she delivered the termination notice to her. The landlord testified that the tenant said; "*do not come around here, don't show your face here. You better watch your back and don't step foot over here again.*"

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. The tenant was given a termination notice on 15-January-2024 to vacate the premises on 21-January-2024. 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.
14. Based on the landlord's testimony and the exhibits submitted by the landlord (witness statements and audio), I accept that the tenant is causing some grief for the other tenants in the quadplex and causing stress for the landlord, however when weighing the evidence, I am unable to put a lot of weight on the witness statements as they are not sworn affidavits. The incident in October never officially identified the perpetrator as being the tenant nor were any legal charges ever filed. The son of the tenant telling a second tenant that his mother was responsible for the doorbell camera incident is hearsay. I asked the landlord if she had witnessed anything herself and she responded that she has not witnessed any incidents whereby the tenant was interfering with the peaceful enjoyment of the other tenants in the quadplex, and that she only received complaints from the other tenants and the neighbor. With regards to the audio from the neighbor that was submitted by the landlord, I am unable to enter the audio into evidence as any incidents between the tenant and her neighbor do not fall under the jurisdiction of *Residential Tenancies*. With regards to the tenant interfering with the rights of the landlord, I find that the incident on 15-January occurred as the landlord was serving the tenant with the termination notice and could not be a basis for issuing the termination notice. The landlord failed to provide any other incidents where the tenant interfered with her rights as a landlord. For those reasons, I find that the landlord was unable to prove that the tenant interfered with the peaceful enjoyment or reasonable

privacy of the other tenants in the quadplex or that the tenant interfered with her rights as a landlord.

15. In accordance with the *Residential Tenancies Act, 2018*, I find that there just isn't enough concrete evidence to show 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.

16. I find that the tenant may reside at the residential premises until such time as a proper termination notice is received.

Decision

17. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

Summary of Decision

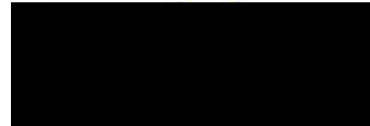
18. The termination notice is not a valid notice.

19. The landlord's claim for an order for vacant possession of the rented premises does not succeed and the landlord will not be awarded an Order of Possession.

20. The tenant may reside at the residential premises until such time as a proper termination notice is received.

February 23, 2024

Date



Pamela Pennell
Residential Tenancies Office