

Residential Tenancies Tribunal

Application 2024-0122-NL & 2024-0127-NL

Decision 24-0122-00

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 7 March 2024 via teleconference. The hearing was to adjudicate two separate applications: 2024-0122-NL and 2024-0127-NL.
2. [REDACTED] represented by [REDACTED] hereinafter referred to as "landlord", attended the hearing.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant", did not attend the hearing, nor was he represented.

Preliminary Matters

4. Prior to the hearing, I was unable to contact the respondent as contact information was not available to me. 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 applicant provided an Affidavit of Service demonstrating that the respondent was personally served a Notice of Hearing at [REDACTED] on 21 February 2024 at approximately 12:20 PM (**Exhibit L # 1**). 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 his absence.
5. The landlord did not amend his application and was seeking vacant possession of the rental property.
6. As the tenant did not attend and there was no Affidavit of Service in relation to application 2024-0127-NL, this application was dismissed.
7. 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

8. The landlord is seeking the following:

- An order for vacant possession of the rented premises.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*
10. 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

11. The landlord offered testimony the tenant had initially moved into the fully attached house on 15 September 2023. The landlord stated there is a written weekly (**Exhibit L # 2**) agreement in place which did include a security deposit collected on 15 September 2023 in the amount of \$372.00 and a monthly rental amount of \$700.00 due on the 1st day of each month. This rental agreement has the tenant occupying a bedroom in the house with other tenants, and shared common areas and utilities including internet, heat, and a single bed. The tenant remains in the property on the date of the hearing.
12. The landlord offered testimony the tenant, although not mandatory or a condition of tenancy, was offered regular and on-going access to interactions with staff of the [REDACTED] for emotional, mental health support and appropriate life choices support, which the tenant has not accessed. The landlord stated there has been a number of situations where the tenant was playing loud music which was interfering with the other tenants of the rental.
13. Along with his application, the landlord provided a letter dated 19 January 2024 outlining the concerns with the actions of the tenant (**Exhibit L # 3**).
14. The landlord issued the tenant a Landlord's Notice to Terminate Early- Cause, citing interference with peaceful enjoyment and reasonable privacy, on 7 February 2024 by personal service with a request for the tenant to be out of the rental property by 13 February 2024 (**Exhibit L # 4**).
15. The landlord offered testimony during the hearing that since being issued the Notice to Terminate, the tenant has been involved in a number of verbal confrontations with other

tenants of the rental and was not responding to any interactions by staff of the [REDACTED]
[REDACTED] He stated staff are on-site on a daily basis at 17 Sebastian Court and the tenant continues to play music that is disruptive to other tenants. The landlord indicated that the tenant's verbal abuse to other tenants is having a negative impact on the other tenants in the rental.

Analysis

16. Upon review of the notice issued by the landlord to the tenant on 7 February 2024, I observe the notice requests the tenant be out of the rental by 13 February 2024.
17. 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 # 4**), I see all these criteria has been met.

18. Consideration of section 35 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

- (a) *Giving it personally to the tenant;*
- (b) *Giving it to a person 16 years of age or older who apparently lives with the tenant;*
- (c) *Positing it in a conspicuous place on the tenant's residential premises; &*
- (d) *Placing it in the tenant's mailbox or under a door in the tenant's residential premises*

19. The landlord offered testimony that the Notice to Terminate Early- Cause was issued to the tenant by a staff of the [REDACTED] Requirements of section 35 were met.
20. The landlord 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.

21. 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.
22. 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.*

23. 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.
24. The tenant had been issued documentation on 19 January 2024 indicating concerns the actions of the tenant was having on other tenants of [REDACTED] as the landlord was attempting to deal with the concerns (**Exhibit L # 3**). Following this, the landlord offered testimony and evidence (**Exhibit L # 4**) that the tenant continued to engage in disruptive actions which included excessive noise, obnoxious behavior and aggressive threats towards other tenants.
25. 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 impacted on the other tenants peaceful enjoyment prior to being issued a termination notice.

Decision

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

Summary of Decision

27. The landlords claim for vacant possession succeeds.

22 March 2024

Date

Michael J. Reddy
Residential Tenancies Office