

Residential Tenancies Tribunal

Application 2024-0126-NL

Decision 24-0126-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:16 a.m. on 12-March-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.
4. The landlord called [REDACTED] into the hearing as a witness.

Preliminary Matters

5. There was a counter application received from the respondent, however in her absence that application has been labelled as discontinued and unmarked as a counter to 2023-0126-NL.
6. The respondent 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 served the tenant with the notice of hearing electronically by email to; [REDACTED] on 1-March-2024 (LL#1). The landlord confirmed that the email was actually sent after 4:00pm on 29-February-2024 and provided proof of sent email (LL#2) and proof of email address (LL#3). In accordance with the *Residential Tenancies Act, 2018* this is good service. As the respondent was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.
7. The unit is a house with rooms rented to tenants who share common spaces. There is a written sublet rental agreement between one of the tenants (now landlord) and a new

tenant which commenced on 5-January-2024. Rent is \$550.00 per month due on the first of each month. A security deposit was never received.

8. The landlord amended the application to increase rent paid from \$275.00 as per application to \$1100.00.

Issues before the Tribunal

9. The landlord is seeking:
 - An order for vacant possession of rented premises
 - Rent paid \$1100.00
 - Hearing expenses \$67.46

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 decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10; Statutory conditions, Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy. Also relevant and considered is Section 12-1 of the *Residential Tenancies Policy Manual: Recovery of Fees*.

Issue # 1: An Order for Vacant Possession of Rented Premises

Relevant submission:

12. The landlord submitted a termination notice under Section 24; Notice where tenant contravenes peaceful enjoyment and reasonable privacy. The notice was dated for 30-January-2024, with a termination date of 8-February-2024 (LL#4).

Landlord's Position

13. The landlord testified that she sublet her room to a tenant who has been causing a lot of distress for the other tenants in the unit. The landlord testified that the new tenant continuously causes disturbances within the unit, making the other tenants uncomfortable in their own home. The landlord stated that she started to receive several complaints from the other tenants early on in the tenancy stating that they are scared and fearful to sleep at night. The landlord testified that on 28-January-2024 the Police had to be called for the first time to deal with the new tenant who became violent with the other tenants accusing them of hacking into her phone, making racist comments and screaming and slamming doors. The landlord testified that this was only the beginning of what was to come and from that date onwards, the Police had to be called several times. The landlord stated that the tenant moved her partner into the unit who interfered with the peaceful enjoyment and reasonable privacy of the other tenants. The landlord stated that she received text messages and calls from the other tenants stating that this uninvited guest was using their toiletries and eating their food. The landlord testified that the uninvited guest made the other tenants fearful for their lives and they had to lock themselves in their bedrooms at night in fear of what might happen. The landlord stated that the other tenants made her aware of acts of violence between the new tenant and her partner whereby the Police had to get involved.

14. The landlord called a witness who resides at the premises to provide testimony in support of her claim. This witness was rather upset during the hearing and expressed concern for her safety and the safety of the other tenants within the unit. The witness testified that from the moment the new tenant moved in, there was yelling and screaming, false accusations and derogatory comments including racist slurs. The witness testified that the tenant would flick the electricity switch causing the lights to go out. The witness testified that she did not feel safe in the unit and spends most of her time locked in her room. The witness confirmed the incident on 28-January-2024 whereby the Police were called. The witness testified that the police were called several times after to remove the uninvited guest from the home only for him to return each time.

Analysis

15. 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.

16. 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.*

17. The tenant was given a termination notice on 30-January-2024 to vacate the premises on 8-February-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*. The termination notice meets the timeline requirements of the *Act*.
18. In weighing the evidence, I find that the landlord’s testimony is mostly hearsay however, the witness’s testimony was sufficient to determine that the tenant is responsible for interfering with the peaceful enjoyment of the other tenants who reside at the premises.

The tenant was not present to dispute that she has caused the disturbances as listed above. The witness was able to demonstrate that her peaceful enjoyment within the unit and her reasonable privacy was contravened not only due to the behavior of the new tenant but also due to the presence of her partner who did not have a right to reside at the premises. I accept that the tenants have been living in fear since the new tenant moved in and for those reasons, I find that the new tenant has contravened the rights of the other tenants as outlined in statutory conditions stated above.

19. In accordance with the *Residential Tenancies Act, 2018*, I find that the respondent has contravened statutory condition 7(a) as set out in subsection 10(1) as stated above. As such, the termination notice meets the requirements of the Act and is a valid notice.

20. I find that the tenant should have vacated the premises by 8-February-2024.

Decision

21. The landlord's claim for an order for vacant possession of the rented premises succeeds.

Issue # 2: Rent Paid \$ 1100.00

Relevant Submission

22. The landlord testified that rent is outstanding in the amount of \$1100.00 dating back to February 2024. See breakdown of ledger below based on landlord's testimony:

Rental Ledger 2024-0126-NL			
Date	Action	Amount	Total
January 31, 2024	Balance		\$0.00
February 1, 2024	Rent due	\$550.00	\$550.00
March 1, 2024	Rent due	\$550.00	\$1,100.00

Landlord's Position

23. The landlord testified that rent is outstanding in the amount of \$1100.00 for the period of 1-February to 31-March-2024. The landlord is seeking rent to be paid in full.

Analysis

24. Non-payment of rent is a violation of the rental agreement. Rent is required to be paid under a rental agreement by a tenant during the use or occupancy of a residential premises.

25. The rental ledger is amended to show a daily rate for March as this tribunal does not consider future rent (see below). I find that the tenant is responsible for outstanding rent from 1-January to 12-March in the amount of \$766.36.

Amended Ledger 2024-0126-NL			
Date	Action	Amount	Total
January 31, 2024	Balance		\$0.00
February 1, 2024	Rent due	\$550.00	\$550.00
March 1-12, 2024	Rent due	\$216.36	\$766.36

Daily rate: \$550 x 12 mths = \$6600
\$6600 / 366 days = \$18.03 per day

26. The tenant has been in arrears since 1-February-2024. I find that the tenant is responsible for outstanding rent in the amount of \$766.36 for the period of 1-February to 12-March-2024.

27. The tenant shall pay a daily rate of \$18.03 until such time as the landlord regains possession of the property.

Decision

28. The landlord's claim for rent succeeds in the amount of \$766.36.

Issue # 3: Hearing expenses \$20.00

29. Section 12-1 of the *Residential Tenancies Policy Manual* states:

Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF

12-1 Allowable hearing expenses: Cost of filing an application for mediation or adjudication of a dispute.

30. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and also incurred the cost of a Notary Public to witness the affidavit in the amount of \$47.46. The landlord provided a copy of receipts (LL#5).

31. As the landlord's claim has been successful, the tenant shall pay the \$67.46.

Decision

32. The landlord's claim for hearing expenses succeeds in the amount of \$67.46.

Summary of Decision

33. The tenant shall pay the landlord \$833.82 as follows:

Rent	\$766.36
Hearing expenses.....	67.46

Total..... \$833.82

34. The tenant shall pay a daily rate of rent beginning 13-March-2024 of \$18.03, until such time as the landlord regains possession of the property.

35. The tenant shall vacate the property immediately.

36. The tenant shall 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.

37. The landlord will be awarded an Order of Possession.

March 19, 2024

Date



Pamela Pennell
Residential Tenancies Office