

Residential Tenancies Tribunal

Application 2024-0211-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held 11-April-2024.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, was represented at the hearing by [REDACTED], who attended via teleconference.
3. The respondent, [REDACTED], hereinafter 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 them 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 they have been properly served. The landlord submitted an affidavit (LL#1) with their application stating that they had served the tenant with notice of the hearing via registered mail on 21-March-2024. The tracking number, [REDACTED] was provided. Checking the number showed that the mail was sent on the day stated above and was received. The appropriate supporting documents were also provided as part of LL#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 their absence.

Issues before the Tribunal

5. Should the landlord's application for an order of vacant possession succeed?

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).

7. Also considered and referred to in this decision are sections 24 and 34 of the *Act*, as follows:

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.

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; and
- (d) state the section of this Act under which the notice is given.

Issue 1: Vacant Possession of the Rental Premises

8. In order to receive an order for vacant possession, a landlord must have issued a valid notice of termination. To be valid, a termination notice must comply with all relevant sections of the *Act*. The landlord provided a copy of a termination notice (LL#2) which they had served on the tenants. LL#2 is in writing in the form prescribed by the minister. It contains the name and address of the recipient. It identifies the residential premises for which the notice is given and states the section of the *Act* under which it was given. It therefore complies with s. 34 of the *Act*, reproduced above.

9. LL#2 was signed by the landlord. It states the date on which the rental agreement terminates. The landlord testified it was served on the tenant by placing it under the door of their apartment, as per s. 35(2)(d) of the *Act*, on 12-March-2024. It therefore complies with s. 24(2) of the *Act*, reproduced above.

10. LL#2 shows a termination date of 18-March-2024. This provides 5 clear days from the date on which the notice was delivered. The timeline therefore complies with s. 24(1) of the *Act*.

11. The only remaining issue is whether or not the tenants violated statutory condition 7(a) as set out in subsection 10(1) of the *Act*, which reads as follows:

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 or the property of which they form a part.

12. The landlord's representative testified about an incident that occurred on 4-March-2024. She was alerted to a problem by the resident manager, who invited her to review the records of the security cameras which show the common areas of the rental premises. Timestamped photos from these cameras were also provided (LL#3). She testified that the tenant took cushions from chairs left in the common area by the landlord for the use of tenants and their guests. The photos show him approach these chairs with his arms empty, and then show him carrying the cushions back to his apartment. The representative testified that there had been several attempts to ask the tenant to return the cushions, but to no avail.

13. Another incident occurred on 12-March-2024. The representative testified and the pictures show that the tenant was carrying some wooden items, possibly drawers from a desk or bureau, out of his apartment, one in each hand. During this process the tenant strikes the wall next to another person's apartment. He does so with the corner of the drawer in his right hand, reaching across his body to strike the wall on his left side. The hallway he is walking along is wide, with ample space to his right. He keeps moving without pause after the strike. All of this leads me to conclude that the strike was intentional. It left a hole in the wall large enough to be visible in the security camera footage.

14. The landlord's representative also testified that the tenant had a habit of leaving furniture in the hallway outside his apartment, which could potentially be a fire hazard.

15. Considering the evidence in its totality, I am satisfied that the tenant interfered with the rights of the landlord and the other tenants of the apartment building and that they did so unreasonably. The termination notice is therefore valid.

16. As the termination notice was valid, the tenancy terminated on 18-March-2024. Insofar as the tenant is still residing at the premises, they are doing so illegally.

Decision

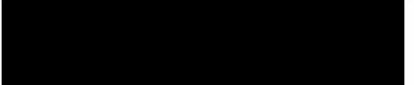
17. The landlord's application for an order of vacant possession succeeds.

Summary of Decision

18. The tenant shall vacate the premises immediately.
19. 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.
20. The landlord is granted an order of possession.

15-May-2024

Date


Seren Cahill
Residential Tenancies Office