

Residential Tenancies Tribunal

Application 2024-0292-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 21 May 2024 via teleconference.
2. The applicant, [REDACTED], hereinafter called “the landlord”, attended the hearing and offered testimony. The landlord called two witnesses, [REDACTED], hereinafter called the “landlord’s 1st witness”, and [REDACTED], hereinafter called the “landlord’s 2nd witness”, attended the hearing and offered testimony.
3. The respondent, [REDACTED], hereinafter called “the tenant”, did not attend the hearing and was not represented.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach him 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 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 he has been properly served. The landlord submitted an affidavit with his application stating that the tenant was served notice via registered mail ([REDACTED]) on 3 May 2024 (**Exhibit L # 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 in the hearing in his absence.
5. The details of the claim were presented as a verbal monthly agreement with rent set at \$600.00 pay own utilities which is due on the first of each month. There was no security deposit collected on this tenancy and the tenant has resided at [REDACTED] [REDACTED] since 2018.
6. The landlord did not amend her application and was not seeking hearing expenses.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for vacant possession of the rented premises.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in Sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. Also, relevant and considered in this decision are sections 24 and 34 of the *Act*, as well as Policy 07-001 of the *Residential Tenancies Program*.

Issue 1: Vacant Possession of the Rental Premises

10. The landlord testified the tenant has rented the three-bedroom apartment for approximately six years and in August 2023 she attempted to evict the tenant without success. As of the date of the hearing, the landlord stated the tenant remains in the rental premises.
11. Under Section 18, the landlord issued the tenant a Landlord's Notice to Terminate-Standard on 4 April 2024 with a request for the tenant to vacate by 31 July 2024 (**Exhibit L # 2**). The landlord served this notice to the tenant by personal service on 4 April 2024 by placing it on the entry way of the rental. The landlord testified the two witnesses attended with her on 4 April 2024 as she had safety concerns after she had been verbally threatened by the tenant in December 2023.
12. The landlord testified she had been contacted by the local fire department indicating there was a fire inside the tenant's apartment which the fire service had responded to. Following this, the landlord issued the tenant a 24-hour notice to enter the rental due to concerns with potential damage (**Exhibit L # 3**). The landlord stated she issued the tenant this notice to enter on 26 March 2024 with a request to enter at 2:00 PM on 27 March 2024 by placing the notice on the entry way of the rental.
13. On 27 March 2024 the landlord testified she was denied entry by the tenant as the front entry way was tied with rope.
14. The landlord's 1st witness testified he attended the rental property on 27 March 2024 with the landlord and the landlord's 2nd witness at which time the tenant denied the landlord entry in the rental property.
15. The landlord's 2nd witness testified did not dispute the events which were presented by witness 1. The landlord's 2nd witness stated the tenant was informed on 27 March 2024 the local policing authority would be contacted.
16. The landlord testified on 4 April 2024 the tenant was personally issued a Landlord's Notice to Terminate Early- Cause (**Exhibit L # 4**) with a request for the tenant to vacate

by 14 April 2024. The tenant had been issued this notice by it being placed on the door of the rental unit.

Analysis

17. Statutory conditions 5 and 6, 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 conditions governing the residential premises apply:

...

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
(b) The entry is made at a reasonable time and written notice has been given to the tenant at least 24 hours in advance of the entry

...

6. Entry Doors- Except by mutual consent, neither the landlord nor a 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.

18. The landlord and both witnesses offered testimony that the tenant had been issued appropriate notice to enter the rental as determine in the *Act*, 2018. Furthermore, the landlord and witnesses offered consistent testimony the tenant denied access after appropriate service was provided. As well, the evidence and testimony I have been offered indicates the tenant altered the locking system of the entry to the residential premises which included rope tied to the door handle of the main door which would prevented entry into the unit. As per statutory condition 10(7) a, “*the tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord*”. In this instance, the landlord has a right to enter the premises. She had a legitimate concern and provided sufficient notice to enter the property to determine damages. The tenant unreasonably interfered with the rights of the landlord by denying entry. The termination notice citing interference with peaceful enjoyment is valid.
19. Also worth consideration in this decision is *Policy 07-001, General Information, Notice of Termination of the Residential Tenancies Program*. The landlord issued the tenant two termination notices dated on 4 April 2024. The first notice was issued under Section 18 whereas the second notice was issued under Section 24.
20. As defined in Policy 07-001, “**Termination by More than 1 Notice**, If a termination notice is already in placed and a second notice is issued by either party whereby the termination date is earlier than that specified in the first notice, then so long as the

second notice is valid, the tenant is required to vacate on the date specified in the second notice".

21. Upon review of the Section 24 Notice (**Exhibit L # 4**), this notice requires that when a premises is rented for month to month, the landlord can 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 serviced. On examination of the notice issued and submitted into evidence (**Exhibit L # 4**), I find the notice was served on 4 April 2024 with a termination date of 14 April 2024. The notice issued is in clear compliance with the requirements of section of section 18(2)(b). Sections 24(2) and 34 identify the technical requirements of the termination notice. On examination, I find that all the criteria have been met.

Decision

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

Summary of Decision

23. The landlord is entitled to the following:

- An order for vacant possession of the rented premises; and
- 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.

29 May 2024

Date

Michael Reddy, Adjudicator
Residential Tenancies Office