

Residential Tenancies Tribunal

Application 2024-0300-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 14-May-2024.
2. The applicants, [REDACTED] and [REDACTED] hereinafter referred to as the landlords, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, attended via teleconference alongside his representative [REDACTED] of the [REDACTED].

Preliminary Matters

4. The tenant said at the time of the hearing that the first page of the “respondent documents” was missing from the package served on him. The landlords denied that the page was missing. The first page of the documents contains the date and time of the hearing, the number to dial in, and a dated signature from the residential tenancies officer who would have completed the package, as well as some information about mediation services. The tenant still received the notice of the hearing including the specifics of the claim against him. For this reason, I found that the tenant would not be prejudiced by refusing his request for a postponement and the request was denied.

Issues before the Tribunal

5. Should the landlord’s request for an order of vacant possession be granted?

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 landlords provided a copy of a termination notice (LL#2) which they had served on the tenant. 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 on the door of the apartment, as per s. 35(2)(d) of the *Act*, on 3-April-2024. It therefore complies with s. 24(2) of the *Act*, reproduced above.
10. LL#2 shows a termination date of 9-April-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 tenant 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 rental premises is a basement apartment. The landlords dwell upstairs. The landlords testified as to a number of issues they allege contribute to the unreasonable interference with their rights. They testified that: the tenant smokes inside the apartment; that he owns two cats and is neglectful of them; that he practices improper garbage disposal which attracts pests; that he damaged the premises; that he once called the police on the landlords at 4 a.m. because their baby was crying; that that he has insulted both landlords; that he once threatened one of the landlords in front of their children; that he took the landlords' lawnmower allegedly to fix it and never returned it; that he keeps a knife behind the entrance of the door; and that he keeps the premises in an unclean state.

13. The tenant denies the landlords' claims that he has interfered unreasonably with the landlords' rights. He is adamant that he does not smoke inside the apartment, adding that he suffers from COPD, a chronic disease of the respiratory system, and that he is currently in a smoking cessation program learning to wean himself off cigarettes. He testified that he loves his cats and is attentive to their needs. He says his issues with putting out garbage have been during and due to periods of high winds and not neglect. He agrees that he once called the police to check on the landlords at 4 a.m., but says it was not merely because a baby was crying but because he had a genuine concern there was a safety issue based on the noises he was hearing. He denies ever threatening one of the landlords. He recalls the day on which the landlords say the threat occurred. The landlords testified that he had thrown the garbage bin and, when confronted, insulted and threatened the landlord. The tenant testified that he was struggling with the bin in high winds, that he did kick it in frustration, harder than he had intended, and this had sent it rolling. He says he had to chase after it. He recalls being shocked when he was later met by police and charged with uttering threats. He says he did not speak to the landlords at all while out. He testified that he did take the lawnmower and tried to fix it, but could not. He said he took it to a repairperson, but they said it could not be fixed. He testified that he gave the landlords the repairperson's card. He denies keeping the apartment in an unclean state.

14. Whether or not the tenant smokes in the apartment is not directly relevant to interference with the landlords' rights under s. 24, though it may be a violation of the lease agreement and grounds for eviction under s. 20(2). Similarly, no evidence before me suggests the tenant's cats have an impact on the landlords' peaceful enjoyment. Without evidence that the tenant's act is malicious, I cannot find that him calling the police to check on a neighbour is a violation of their rights. To do so would discourage intervention in cases where police assistance may be warranted.

15. The allegations of damages to the premises are unsupported by any photographic or documentary evidence. Allegations that he keeps the premises unclean are also unsupported by any supplementary evidence and, in any case, would not necessarily lead to an inference that the landlords' rights were unreasonably interfered with, though such an allegation may justify an eviction under s. 22.

16. I can understand why hearing that the tenant allegedly keeps a knife nearby when opening the door would cause the landlords concern. The implication seemed to be that it was there in case of self-defense. While the presence of a potential weapon is unsettling, possession of a knife is not illegal and does not directly impact the landlords' right to peaceful enjoyment.
17. Of the landlords' allegations, three stand out. The first is that the tenant's garbage disposal practices invites pests. This is a valid concern, and it is obvious on its face how it would affect the landlords' peaceful enjoyment of the property. The presence of vermin can constitute a hazard to both property and health. The second is that the tenant allegedly took and kept an item of the landlords', a lawnmower. Conversion of property is a form of theft and naturally impacts the landlords' rights. The third and perhaps the most serious allegation is that the tenant threatened the landlord's life. This is a serious concern which merits careful consideration.
18. The tenant denies the allegations of improper garbage disposal. I have the sworn testimony of the tenant and his representative on the one side, and the sworn testimony of the landlords on the other. No supplementary evidence of garbage or lack thereof was provided by either party. This is therefore a "he said, she said" situation and turns on my analysis of the parties' testimony. The landlord did suggest that the property was currently in disarray and invited me and/or the tenant's representative to visit and inspect it. This tribunal does not conduct information gathering sessions as taking on an investigatory role could jeopardize our impartiality. It is therefore vital that parties prepare for a hearing by gathering all the evidence they may need to support their claim.
19. The tenant claimed he brought the lawnmower to a repair shop and gave the landlord the number of the person he spoke to there. The landlords did not respond to this claim.
20. The landlords testified that the tenant threatened one of them. The tenant testified that he did not. Neither account had any internal inconsistencies that I was able to detect nor any that were pointed out to me. I have no reason to prefer one account over the other.
21. The landlords did attack the credibility of the tenants' testimony and I have taken their arguments into account. They correctly noted that the tenant testified that he "never had twelve cats" and claimed this contradicted their email to the SPCA that their tenant had twelve cats. Even if I accepted hearsay evidence of the landlord's own email as evidence of a statement by the tenant, I do not find this to be a contradiction in context. The tenant did say he "never had twelve cats." He then immediately went on to explain how his cat had a litter of kittens and he worked to have them adopted. I infer from the context that the tenant did not literally mean there were never twelve cats in his apartment for any length of time, but that he disputed an allegation that he was keeping twelve cats, when in fact his possession of the kittens was a temporary unintentional state he worked to change.
22. Similarly, the landlords provided hearsay evidence that another person had told them the tenant had admitted to keeping the knife behind the door for self-defense as he believed

he had been subjected to break-ins. They stated that this revealed that his testimony that he used it to "jimmy" a broken lock was a lie.

23. Also, the landlords pointed out the tenant said they had only one power meter, but in fact they have two.
24. In every point the landlord raises about credibility, the only evidence they present to contradict the tenant is their own testimony. Sometimes, their testimony is to what someone else told them. The words of another used as proof of their contents is what is called "hearsay" evidence. It is notorious in law for being unreliable and is presumptively inadmissible in courts of law. I see no reason to admit it here and decline to do so.
25. I see no reason in law to prefer the testimony of the landlords over the tenants' testimony.
26. Considering the evidence in its totality, I find that the landlord has not proven on a balance of probabilities that the tenant violated their right to peaceful enjoyment.

Decision

27. The termination notice dated 3-April-2024 is invalid.

26-June-2024

Date


Seren Cahill
Residential Tenancies Office