

Residential Tenancies Tribunal

Application 2024-0340-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:59 p.m. on 3-July-2024.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, attended the hearing.
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 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 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 had served the tenant with the notice of hearing by pre-paid registered mail ([REDACTED]) on 2-May-2023 (LL#1). Canada Post tracking indicates that the tenant did not retrieve the mail. In accordance with the *Residential Tenancies Act, 2018* registered mail is considered served 5 days after it has been sent. 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 her absence.
5. There is a written month to month rental agreement which commenced on 1-March-2024. The property is a 3-storey unit, and the respondent resides on the 1st floor with other tenants on the 2nd floor. Rent is \$800.00 per month, due on the first of each month. A security deposit of \$400.00 was paid on 1-March-2023 and is in the landlord’s possession.

Issues before the Tribunal

6. The landlord is seeking:
 - An order for vacant possession of the rented premises

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 24; Notice where tenant contravenes peaceful enjoyment and reasonable privacy.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions

8. The landlord submitted a copy of a termination notice that was given on a *Landlord's Notice to Terminate Early – Cause* form (LL#2). The notice was issued to the tenant on 12-April-2024 under Section 24; *Notice where tenant contravenes peaceful enjoyment and reasonable privacy* to vacate on 30-April-2024.

Landlord's Position

9. The landlord testified that the tenant has interfered with the peaceful enjoyment and reasonable privacy of the other tenants in the unit. The landlord stated that she has addressed the issues of screaming, banging doors, throwing things around and fighting at least 10 times since mid-April and she submitted a sworn witness affidavit to support the claim (LL#3).

Analysis

10. The termination notice was given on 12-April under Section 24; *Notice where tenant contravenes peaceful enjoyment and reasonable privacy* to vacate on 30-April-2024. The termination date given was not less than 5 days after the notice was served which meets the requirements as set out in the *Act*. I find that the termination notice is a valid notice from a timeline perspective but has to be further analyzed for validity (see below).
11. The landlord submitted a sworn affidavit from the tenants on the 2nd floor stating that there have been several incidents ranging in dates from 12-April to 24-April whereby there was fighting, screaming and just very loud noises coming from the 1st floor apartment. The tenant was not present to dispute the claims. I accept the landlord's testimony that she has addressed the issues and the disturbances continue to happen and I accept the witness affidavit. For those reasons, I find that the termination notice given on 12-April-2024 is a valid notice.
12. I find that the tenant should have vacated the unit on 30-April-2024.

Decision

13. The landlord's claim for vacant possession of the rented premises succeeds.

July 8, 2024

Date

Pamela Pennell, Adjudicator
Residential Tenancies Office