

## Residential Tenancies Tribunal

Application 2024-0374-NL

Seren Cahill  
Adjudicator

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### Introduction

1. Hearing held on 8-May-2024.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, attended via teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as the tenants, did not attend.

### Preliminary Matters

4. The tenants were 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 landlords submitted an affidavit (LL#1) with their application stating that they had served the tenants with notice of the hearing electronically via Facebook Messenger and text message. The landlord testified that this was the only method of contact he received from either tenant. The appropriate supporting documents were also provided (LL#2). As the tenants were served, and as any further delay in these proceedings would unfairly disadvantage the landlords, 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#3) which he testified he had served on the tenants. LL#3 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#3 was signed by the landlord. It states the date on which the rental agreement terminates. The landlord testified it was served on the tenants personally on 27-April-2024 with the assistance of a member of the RCMP. It therefore complies with s. 24(2) of the *Act*, reproduced above.

10. LL#3 shows a termination date of 2-May-2024, but the landlord testified that it was amended to 3-May-2024 before it was served. 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 testified as to matters explained to him by the neighbour of the tenant, who is also a tenant of the landlord. The words of another used as evidence of the truth of their contents is hearsay evidence, which would not normally be admitted as evidence in a court of law. S. 46(2)(c) of the Act reads as follows (emphasis mine):

**46. (2) The director may**

  - (c) receive or accept evidence and information on oath, affirmation, affidavit or otherwise, whether or not that evidence or information is admissible as evidence in a court.
13. In the present circumstances, I accept the hearsay evidence of the landlord. No contradictory evidence was provided, and the evidence is internally consistent and was supported by documentary evidence, as I will explain further below.
14. The landlord testified that the neighbour told him she was frightened by the male tenant. They and their children were disturbed by loud shouting from the premises. They told the landlord the tenant said he hated dogs and had splashed their dog with gasoline while it was wandering in a common area. Some of this conversation occurred over text, and this text conversation was provided (LL#5). The neighbour's tone and language in the texts show a high level of stress and worry, and they were concerned that their children were no longer in a safe environment. A picture of the dog was included. One of its eyes is clearly visible in the photo and appears inflamed. The animal's third eyelid protrudes past its lower eyelid and is a very reddish shade of pink. It appears similar to the condition called "cherry eye," which is well known to dog owners. This is consistent with exposure to a toxic substance, though there are other possible causes as well.
15. The landlord testified that the tenant's actions had also scared him, which interfered with his ability to inspect the property and attend to emergencies on the property. In particular, he referred to an incident where he needed to attend to an issue with the furnace. He also said the incidents have caused him significant stress.
16. Considering the totality of the evidence, I accept on a balance of probabilities that the tenants violated statutory condition 7(a). The termination notice is therefore valid.

17. As the termination notice was valid, the tenancy ended on 3-May-2024. Insofar as the tenants are still residing at the premises, they are doing so illegally.

#### **Decision**

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

#### **Summary of Decision**

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

16-May-2024

Date

  
Seren Cahill  
Residential Tenancies Office