

Residential Tenancies Tribunal

Application 2024-0413-NL
Counterclaim 2024-0414-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 22-May-2024.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, 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 the respondent had been served personally on 10-May-2024. The landlord also testified that they had served the tenant electronically, and proof of this was provided (LL#2). 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.
5. Normally, when a respondent does not appear, their counterclaim would be dismissed. However, the respondent's counterclaim was purely regarding the issue of validity of the termination notice. Determining the validity of the termination notice is an essential part of hearing an order for vacant possession, so the issue will still be covered and there is no reason to dismiss the counterclaim.

Issues before the Tribunal

6. Should the landlord's request for an order of vacant possession succeed?

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* (the *Act*).
8. 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

9. 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 she testified she had served on the tenant. 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 to which it refers and states it is given under s. 24 of the *Act*. It therefore complies with s. 34 of the *Act*, reproduced above.
10. 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 tenant electronically via text message (also called MMS) to the tenant's cellphone number on 7-May-2024. A copy of the rental agreement (LL#4) was provided as evidence that the tenant gave this number to the landlord for the receipt of documents. This constitutes effective service under s. 35(2)(f) of the *Act*. LL#3 therefore complies with s. 24(2) of the *Act*, reproduced above.

11. LL#3 shows a termination date of 13-May-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*.
12. 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.
13. The landlord testified as to a number of ongoing issues regarding the tenant. Not all of the issues stem from the tenant directly, but she says that they all originate with the tenant or with the four or five other people the tenant has living with her. The rental agreement specifies that no other occupants are permitted.
14. The landlord testified that she had visited the property on or about the night of 6-May-2024 and found what she described as chaos. She said people were running in circles and shouting at each other. Others were in a tent in the backyard, through which the landlord could see an open flame. In addition to this tent, a semi-permanent structure in the style of a lean-to had been constructed in the backyard against the fence.
15. The landlord provided a significant amount of video and audio evidence. LL#5 shows several people in the backyard. The lean-to is visible. It has been constructed out of fallen pieces of wood, garbage, and pieces of scaffolding. At the beginning of the video, an unidentified woman refers to the tenant by name and accuses them of taking her pills. Her tone of voice is forlorn. There is an audible argument between several others, two of whom seem to be blocking a third from moving to an area off-camera. The third person picks up a piece of wood and brandishes it as if intending to use it as a club, gesturing at the area off-camera. It is unclear, but it may be that the woman accusing the tenant of taking her pills in this area. While I cannot pick out complete sentences, the argument is loud, even though the video is taken from some distance away. A fourth person is gently rocking a small child in a stroller.
16. LL#6 shows another video of the backyard. Many of the objects and cars in the background have moved, indicating it was not taken at the same time. Another argument occurs. It is mostly inaudible. A woman appears to lightly assault a man, placing her hands on his face. He swats them off.
17. LL#7 shows a video of the front of the house. A man stumbles in the road, clutching the side of his neck. The landlord testified that she was told this man had been stabbed with a screwdriver by a guest of the tenant. He appears disoriented or intoxicated, moving in seemingly random directions without purpose and frequently changing direction. He accuses someone of almost killing him. They yell back at him but this is unintelligible. People discuss getting their guns and that they may need them. Someone yells that the police should be called and that the stumbling man is dying. Someone yells "you're

dead!" Many other words are yelled in anger. All of this occurs over the course of the block in front of the house.

18. LL#21 is an audio recording of a man yelling loudly at the tenant, using vulgar language and making accusations of a sexual nature at a high volume. The landlord testified that this was directed at the tenant by her boyfriend and the recording was taken from an area of the premises meant for use in common.
19. LL#21 shows a series of photos, allegedly the aftermath of an incident of violence. Incidentally, the photos show an extension cord which extends from the house, under a broken stove, into the lean-to. Aside from the obvious fire hazard of pinning an electrical cord (even a heavy duty one made for outdoor use) under a heavy appliance, the landlord testified that the electrical draw from the backyard was so high that the power in the rest of the house was at times negatively impacted.
20. The landlord testified that she was present on the property on or about the incident where the woman's pills were allegedly taken.
21. The landlord's uncontradicted testimony and the plethora of multimedia evidence provided together demonstrate that the tenant and her guests interfered with the landlord's and any other tenants' right to peaceful enjoyment and reasonable privacy. The landlord admitted that some of the evidence regarded incidents which occurred after the notice was issued, and that these cannot therefore be the basis of the notice. However, the landlord's testimony of her visit on or about 6-May-2024 is sufficient to meet the standard of interference with the rights of the landlord or other tenants, particularly being as it is corroborated by the other evidence. The landlord has successfully demonstrated that the tenant and her guests have an ongoing pattern of this sort of behaviour. I find the interference to be unreasonable.
22. Considering the totality of the evidence, I accept on a balance of probabilities that the tenant violated statutory condition 107(a). The termination notice is therefore valid.
23. As the termination notice was valid, the tenancy ended on 3-May-2024. Insofar as the tenant is still residing at the premises, they are doing so illegally.

Decision

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

Summary of Decision

25. The tenant shall vacate the premises immediately.
26. 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.

27. The landlord is granted an order of possession.

24-May-2024

Date


Seren Cahill
Residential Tenancies Office