

Residential Tenancies Tribunal

Application 2024-0442-NL & 2024-0518-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 29-July-2024 at 9:12 am.
2. The applicants, [REDACTED] (the first tenant) and [REDACTED] (the second tenant), hereinafter referred to as the tenants, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the landlord, was represented at the hearing by director [REDACTED], who attended via teleconference.
4. The landlord called three witnesses. Their first witness (LLW1) was [REDACTED], manager of the premises. Their second witness (LLW2) was [REDACTED], a maintenance person working for the landlord. Their third witness (LLW3) was [REDACTED], a neighbour of the tenants.
5. The tenants called three witnesses. Their first witness (TW1) was [REDACTED], the second tenant's brother. Their second witness (TW2) was [REDACTED], the second tenant's sister. Their third witness (TW3) was [REDACTED], TW2's partner.

Preliminary Matters

6. The respondents acknowledged they received notice of this hearing more than ten days before the hearing date.
7. The tenants sought at the time of the hearing to amend their claim to include an application for a refund of rent in a nonspecific amount. They did not submit at any point a new application nor did they notify the landlord of this new remedy sought. They submit that they received an email from a Residential Tenancies Officer (RTO) advising this would not be necessary. I have reviewed the emails in question. The tenant advises of a matter concerning evidence and then, in the same sentence, says he would like to add to the application to have rent reimbursed. The RTO responds simply that the tenant ought to submit a sworn affidavit of service at least three days prior to the hearing. I conclude that the RTO simply misread the email in such a way that she overlooked the request to add the refund of rent to the claim.

8. As a matter of procedural fairness, this tribunal cannot hear any claim where the other party has not been given notice and therefore an opportunity to prepare a response. The tenant suggested that if the amendment could not be made, the hearing ought to be postponed to allow for all issues to be heard at the same time. The matters initially scheduled for the hearing date were a request for an order of vacant possession and a challenge to the validity of a termination notice, both under s. 24 of the *Residential Tenancies Act, 2018* (the *Act*), which is termination on the basis of interference with peaceful enjoyment or reasonable privacy. A refund of rent will have no bearing on this issue and vice versa. Postponing the hearing would unduly prejudice the landlord. Accordingly, the request for postponement was refused.
9. As referred to above, the tenants made an application to dispute the validity of a termination notice and the landlord made a counterclaim seeking an order of vacant possession. As a valid termination notice is required in order to receive an order of vacant possession, the two matters have been combined in to one issue below.

Issues before the Tribunal

10. Should the landlord's claim for an order of vacant possession succeed?

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Act*.
12. 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

Landlord's Position

- 13. The landlord submits that they served on the tenants a termination notice (LL#1) on 7-June-2024 with a termination date of 13-June-2024. They testified that this was in response to the tenants' unreasonably interfering with the right of rights of other tenants in the residential premises, a common area, or the property of which they form a part.

Tenant's Position

- 14. The tenants deny that they interfered with the right of peaceful enjoyment of other tenants but contend that even if they did, said interference was not wilful. They testify that the second tenant has a mental health condition which causes her to sometimes "black out" and do things she would not normally do. They submit that it would be improper to evict them for acts not done wilfully or negligently.

Analysis

- 15. In order to receive an order for vacant possession, the landlord must have given a valid termination notice. To be valid, a termination notice must comply with all relevant sections of the *Act*.
- 16. LL#1 is written in the form prescribed by the minister. It contains the name and address of the recipients. It identifies the residential premises for which it was given. It identifies the residential premises for which it was given. It identifies as being given under section 24 of the *Act*. It therefore complies with s. 34.
- 17. LL#1 was signed by a representative of the landlord. It states the date on which the tenancy is set to terminate. It was served on the tenant electronically in accordance with s. 35(2)(f) of the *Act*. It therefore complies with s. 24(2) of the *Act*.
- 18. LL#1 was issued on 7-June-2024 and gives a move out date of 13-June-2024. These dates are not less than five days apart, as required under s. 24(1). The remaining question is whether the tenants contravened statutory condition 7(a) as set out in s. 10(1) of the *Act*. Statutory condition 7(a) 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.
- 19. The landlords broke their allegations against the tenants into three separate categories. First, that the tenants are overly loud and create noise through arguments and fighting.

The landlords described this noise as being “continuous” and a “regular occurrence.” Second, they say the tenants kept their apartment in an unclean state which created a strong unpleasant smell that was detectable from the common area and/or other tenant’s units in the same building. Third, they say the tenants routinely ignored the rules of the premises, particularly the prohibition against smoking, and often smoked indoors.

20. To clarify, violation of the terms of the rental agreement may be grounds for termination of the rental agreement under s. 20 of the *Act* but is not necessarily grounds for termination under s. 24. Therefore, the landlord’s third ground is only relevant to this submission insofar and if the tenants smoked on the premises and that smoke interfered with other tenants’ ability to peacefully enjoy the premises.
21. The witness LLW1 testified as to a number of incidents which they say were caused by the tenants and provided dates and times. They say that on 2-July-2023 there was a police response to a domestic disturbance at the tenants’ premises. She says that the next day, she spoke to several other tenants in the building, some of whom have special needs, and that they were very concerned about the noise they had heard. One tenant in particular said she was very afraid.
22. Testifying as to the words of another used as evidence of the proof of their contents (for example, testifying that another person said they were concerned and offering that testimony as evidence that the other person was, in fact, concerned) is hearsay. Hearsay evidence is commonly excluded by courts of law, both because it adds concerns about reliability and prevents cross examination of the person whose words are being offered. S. 46(2)(c) of the *Act* states that the director may receive or accept evidence whether or not that evidence is admissible as evidence in a court. As an authorized agent of the director, this tribunal has the power to accept into evidence hearsay statements whether or not they would be admissible in a court of law. I choose to exercise this discretion to accept hearsay evidence in this case, but with the caveat that I give reduced weight to such evidence due to its inherent unreliability.
23. LLW1 testified that they spoke to the first tenant on 3-July-2023 and he advised her of the second tenant’s mental health issues and that the second tenant had been refusing to take her medication.
24. They also said that on 2-February-2024 a previous employee of the landlord attended the premises in response to a request to repair a damaged ceiling tile, and this employee told LLW1 that the premises was “unbelievably dirty” and “reeked.”
25. On 23-February-2024, LLW1 said they had received another complaint of a strong odour coming from the premises and chose to perform an inspection a few days later. When the inspection occurred after 24 hours, they say that they found a “huge number” of garbage bags overflowing from the bin outside with over 40 bags inside it, despite it only being a few days after garbage pickup. They implicitly ask me to infer that the majority of the garbage bags came from the tenant’s unit. They said that the other tenants said they only put out a bag or two. LLW1 said there was still a significant amount of garbage and dirt inside the apartment, which had attracted a swarm of small flies. Again, I clarify that while failing to keep the premises in an unclean state may be a ground for termination under s. 22(1) of the *Act*, it is not necessarily a ground for termination under s. 24, which

requires that the tenants interfere unreasonably with the rights of others. They say the tenants refused to allow them to inspect the bedroom as the first tenant was sleeping. On 28-February-2024 they attended again and cede that there was some improvement. On 29-February-2024 they say they received another complaint from another tenant of the smell of cat urine coming from the premises.

26. LLW1 testified that the tenants notified the landlord that the tenants requested repairs in the unit but refused to allow the maintenance person (who is LLW2) to enter to affect those repairs even after receiving sufficient notice on two separate occasions, and that the first tenant was loud and belligerent toward this person when they were working on the neighbouring unit.
27. LLW1 testified to other incidents that occurred after 7-June-2024. However, the termination notice LL#1 must be issued in response to the tenants violating statutory condition 7(a). It cannot be retroactively justified by incidents which occurred after it was issued. Incidents which occurred after 7-june-2024 are therefore irrelevant to this termination notice.
28. The tenants asked that I disregard LLW1's testimony as the landlord started her testimony with a leading question. I refuse. This process is meant to be accessible for those without formal legal training to engage in and strict adherence to rules of witness examination is inappropriate. In the present case the landlord was interrupted (via an objection by the tenants) before finishing one leading question, and once given the opportunity to speak LLW1 was then able to provide 15-20 minutes of uninterrupted testimony complete with dates. I am satisfied that the witness's testimony was not in any significant way contaminated and accept it.
29. LLW2 testified that the tenants interfered with their work several times. they said at one point they needed to access the premises to effect repairs and the tenants refused, telling them to come back the next day. They say they returned the next day and were still refused access. They also corroborated LLW1's testimony in paragraph 26, above, about the first tenant becoming irate with them. They say the tenant "come off his head." This was at 12:30 pm. LLW2 could not recall the date. I asked LLW2 if they recalled smelling anything unpleasant outside the tenants' premises and they said they did not.
30. LLW3 testified that they have heard the tenants fighting on many occasions, and that this disturbs them and the other tenants, even at 2 am. They said that the bad odour coming from the tenants' apartment is strong even in the lobby, a common area of the building. They specified that the odour is "not a smell, a stench." They testified that the tenants will sometimes go door to door in the building looking to ask other tenants for small items like cigarettes. They testified that they had asked the tenants to quiet down many times. They said that at least one other former tenant, an elderly wheelchair user, was "terrified," and would contact them for help.
31. The first tenant testified that the tenants do not smoke in the premises. He denied that all the garbage mentioned by the landlord was theirs but agreed that at one time the apartment became unclean. He submitted that the audible disturbances were caused by the second tenant's mental health issues. The tenant's witnesses all testified to the fact

that the second tenant suffers periodic "black out" episodes where she will behave irrationally and say and do things she would not otherwise do.

32. Considering the evidence in its totality, I am satisfied on a balance of probabilities that the tenants interfered unreasonably with the right of other tenants and the landlord to enjoy the use of the premises, common areas, or the property of which they form a part. Allowing garbage to accumulate to such an extent that it creates an odour as described by multiple witnesses is a continuous, ongoing event. This constitutes unreasonable interference with the other tenants. Interfering with a maintenance's person's lawful entry to effect repairs on the premises constitutes unreasonable interference with the rights of the landlord.
33. LL#1 is valid.

Decision

34. LL#1 is a valid termination notice which gives a move out date of 13-June-2024. The tenancy therefore terminated on 13-June-2024. Insofar as the tenants are still residing at the premises, they are doing so unlawfully. The landlord's application for an order of vacant possession succeeds.

Summary of Decision

35. The tenant shall vacate the premises immediately.
36. The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sherriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession.'
37. The landlord is granted an order of possession.

15-August-2024

Date


Seren Cahill
Residential Tenancies Office