

Residential Tenancies Tribunal

Application 2024-0446-NL & 2024-0472-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:03 a.m. on 2-July-2024.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent and counter applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.

Preliminary Matters

4. The tenant testified that she served the landlord with the notice of hearing via email on 30-May however the landlord disputes receiving the document and stated that he made an application but was unaware that it was a counter claim at the time. The landlord submitted an affidavit stating that he served the tenant with the notice of hearing by giving the document to another person ([REDACTED]) at a place that was not the tenant’s residence on 14-June-2024. In accordance with the *Residential Tenancies Act, 2018* this is not good service, however both parties waived service and wished to proceed with the hearing.
5. There is a verbal month-to-month rental agreement which commenced on 1-February-2022. Rent is \$600.00 per month, due on the first day of each month. A security deposit of \$300.00 was paid in February 2022 and is in the landlord’s possession.

Issues before the Tribunal

6. The tenant is seeking:
 - a. Validity of the termination notice

The landlord is seeking:

- a. 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 are the following sections of the *Residential Tenancies Act, 2018*: Section 22: Notice where a tenant's obligation is not met and Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Policy Manual*: Section 7-5: Interference with peaceful enjoyment and reasonable privacy.

Issue # 1: Validity of the termination notice Vacant possession of the rented premises

Relevant Submissions:

8. The tenant is questioning the validity of a termination notice given to her by the landlord on 15-May-2024 under Section 24 of the *Residential Tenancies Act, 2018* with a termination date of 23-May-2024. The tenant submitted a copy of the termination notice to support the claim (TT#1).
9. The landlord is seeking vacant possession of the residential premises and submitted a copy of 2 separate termination notices, the first one is a duplicate of what the tenant submitted above and the second was given at a later date, on 29-May-2024 under Section 22 and Section 24 of the *Residential Tenancies Act, 2018* with a termination date of 5-June-2024. The landlord submitted a copy of the termination notices to support his claim (LL#1).

Landlord's Position

10. The landlord testified that the tenant lives in a duplex and has been interfering with the peaceful enjoyment of another tenant within the unit. The landlord stated that both tenants are friends with each other and sometimes they will have arguments and fight, and the other tenant will call him and complain that they are not getting along. The landlord also testified that the tenant has not been keeping the unit clean and has failed to complete repairs as requested in writing on 14-May-2024 (LL#2).

Tenant's Position

11. The tenant disputed that she has ever interfered with the peaceful enjoyment of the other tenant in the duplex and the tenant also disputed that she did not clean around the unit and complete the repairs as requested. The tenant testified that she cleaned the unit inside and out, painted the interior and completed any repairs caused by her during the tenancy.

Analysis

12. The landlord gave a termination notice with cause on 15-May-2024 under Section 24: *Interference in peaceful enjoyment and reasonable privacy*. The termination date was given not less than 5 days after the notice was served which meets the requirements as set out in the Act. The landlord gave a second termination notice with cause on 29-May-2024 under Section 22: *Failure to keep the premises clean and to repair damage* and Section 24: *Interference with peaceful enjoyment and reasonable privacy*. The termination date was given not less than 5 days after the notice was served which meets

the requirements as set out in the *Act*. I find that both the termination notices are valid notices from a timeline perspective but have to be further analyzed for validity (see below).

13. With regards to Section 22: *Failure to keep the premises clean and to repair damage*, the landlord testified that he gave the tenant a *request for repairs* form on 14-May to complete the following by 18-May:

- 1). All garbage to be removed inside and outside of house
- 2). All fly screens to be replaced in windows and doors
- 3). Entrance door to be fixed (busted in)
- 4). Kitchen sink to be fixed (blocked drain)
- 5). Room in bathroom to be painted (blood on wall)
- 6). A full cleaning of the house
- 7). Paint full house or return the paint
- 8). Carpet fixed in bedroom (torn up by cat)

14. I asked the landlord if he returned to the premises on 18-May or at a later date to inspect the property to see if the repairs had been carried out and he testified that he did not. The landlord stated that he noticed while driving by the premises that the outside of the area had been cleaned up. I asked the tenant if she had made the repairs to the unit, and she testified that she completed most of the repairs as requested however she did not replace the fly screens as they were missing when she took possession of the unit, and she did not fix the torn carpet as the carpet was damaged when she took possession. The tenant also stated that she was not responsible for the broken door as she did not cause that damage either. The tenant stated that the door was busted in, and the *Police* were involved and although she did not cause the damage, she attempted to have it fixed but was unsuccessful due to the nature of the damage. The tenant testified that the sink is fixed, and she has painted the house and cleaned the house both the inside and the premises outside. I accept the tenant's testimony that she did everything she could to make the repairs and clean the area and as the landlord never returned to the unit to inspect the work completed, I find that the landlord failed to demonstrate that the tenant did not meet their obligation to make the requested repairs and as such, I find that the termination notice is not a valid notice.

15. With regards to Section 24: *Interference with peaceful enjoyment and reasonable privacy*, the landlord testified that he has received several complaints from the other tenant within the duplex stating that they have been fighting. The landlord stated that they are friends one day and then they are fighting the next day and it is a continuous thing. In accordance with Section 7-5 of the *Residential Tenancies Policy*, interference with peaceful enjoyment and reasonable privacy is defined as an ongoing unreasonable disturbance or activity, outside of normal everyday living, caused by the tenant. I accept that the tenants were friends and have disagreements or fights from time to time, however based on the landlord's testimony, I find that the landlord was unable to show that there was an ongoing unreasonable disturbance caused by the tenant and for that reason, I find that the termination notice given under Section 24 of the *Act* is not a valid notice.

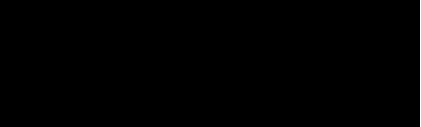
16. I find that the landlord did not show that the tenant contravened Sections 22 and /or 24 of the *Act* and as such, I find that the tenant may remain in the unit until such time as a valid termination notice is given.

Decision

17. The termination notices given on 15-May and 29-May 2024 are not valid notices.
18. The landlord's claim for vacant possession does not succeed.

July 16, 2024

Date


Pamela Pennell, Adjudicator
Residential Tenancies Office