

Residential Tenancies Tribunal

Application 2024-0461-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 22-August-2024 at 1:46 pm.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, was represented by his authorized representative [REDACTED], who also attended via teleconference.

Preliminary Matters

4. The respondent acknowledged they received notice of this hearing more than ten days before the hearing date.

Issues before the Tribunal

5. Should the landlord's claim for an order of vacant possession be granted?

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 22, 24, and 34 of the *Act*, as follows:

Notice where tenant's obligation not met

22. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 2 set out in subsection 10(1), the landlord may give the tenant notice requiring the tenant to comply with the condition.

(2) Where a tenant contravenes statutory condition 2 set out in subsection 10(1) within 3 days after the notice under subsection (1) has been served or within a reasonable time, 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.

(3) 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.

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

8. The landlord submitted that he issued a valid termination notice on the tenant, that the date of termination has elapsed, and that he is therefore entitled to vacant possession of the premises.

Tenant's Position

9. The tenant's representative testified that any disruptive behaviour he exhibited was out of character and, she believes, the result of a mental health event. She acknowledged that the premises were damaged and indicated the tenant seeks to repair the damage.

Analysis

10. In order to receive an order for vacant possession, a landlord must have first issued a valid termination notice. To be valid, a termination notice must comply with all relevant sections of the *Act*.
11. The landlord provided a copy of a termination notice (LL#1) he says he issued to the tenant.
12. LL#1 is written in the form prescribed by the minister. It contains the name and address of the recipient. It identifies the residential premises for which it was given. It states that it is given under sections 22 and 24 of the *Act*. It therefore complies with section 34.
13. S. 22(1) of the *Act* provides that where a tenant breaches statutory condition 2 under s. 10(1) of the *Act* a landlord may give a tenant written notice requiring that they comply with the condition. Only where the tenant fails to comply with this notice may a termination notice be issued under s. 22(2). There was no evidence that the landlord provided a written notice under s. 22(1) prior to issuing LL#1. LL#1 is therefore not valid under s. 22.
14. LL#1 was signed by the landlord who provided it. It states the date on which the rental agreement is to terminate. It was served on the tenant electronically in compliance with s. 35(2)(f) of the *Act*. It therefore complies with s. 24(2).
15. LL#1 was issued on 17-May-2024 and has a termination date of 27-May-2024, not less than five days later. It therefore complies with the timeline requirements under s. 24(1).
16. The only remaining issue is whether or not the tenant violated statutory condition 7(a) under s. 10(1) of the *Act*, 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.
17. The landlord testified that he lives upstairs from the tenant and that in early May the tenant began to make a large amount of noise, which disturbed him and his daughter. When he inspected the property on 10-May-2024, he found that it had been heavily damaged, with large holes in the wall. While damage to the property can be a major concern, it does not by itself constitute interference with the rights of a landlord in the premises or the property of which they form a part.

18. Noise can constitute interference with peaceful enjoyment. In this case, the landlord testified that the noise happened a few times in early May. His testimony was vague. He says there were no issues before this and there has been no noise in months.
19. Considering the evidence in its totality, I do not find on a balance of probabilities that the tenant unreasonably interfered with the landlord's rights.
20. LL#1 is invalid.

Decision

21. The termination noticed dated 17-May-2024 is invalid. The landlord's application for vacant possession fails.

28-August-2024

Date



Seren Cahill
Residential Tenancies Office