

Residential Tenancies Tribunal

Application 2024-0478-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 9:16 a.m. on 3-July-2024.
2. The applicant, [REDACTED], represented by [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 him 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 he/she has been properly served. The landlord’s representative submitted an affidavit with their application stating that they had served the tenant with the notice of hearing personally on 19-June-2024 (LL#1). In accordance with the *Residential Tenancies Act, 2018* this is good service. 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 his absence.
5. There is a written month-to-month rental agreement which commenced on 15-February-2024. Rent is \$700.00 per month, due on the first of each month. A security deposit was paid in the amount of \$375.00 in February 2024 and is in landlord’s possession.

Issues before the Tribunal

6. The landlord is seeking:
 - Validity of termination notices.
 - An order for 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*.
8. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 22; Notice where tenant's obligation not met and Section 24; Notice where tenant contravenes peaceful enjoyment and reasonable privacy.

Issue # 1: Vacant Possession of the Rental Premises Validity of termination notices

Relevant Submissions

9. The landlord's representative submitted 2 copies of the termination notices that were given on a *Landlord's Notice to Terminate Early – Cause* form (LL#2.3). The first notice was issued under Section 22, due to the failure to keep premises clean and repair damages. The second notice was issued under Section 24 due to the interference with peaceful enjoyment and reasonable privacy. Both termination notices were issued to the tenant on 23-May-2024 where termination date was listed as 31-May-2024.

Landlord's Position

10. The landlord's representative testified that they gave the tenant a termination notice under Section 22 of the *Act* personally on 23-May-2024 as the tenant has repeatedly failed to maintain a clean and sanitary living environment within his rental unit. The landlord's representative stated that the tenant accumulated significant amount of dust and general uncleanliness. The landlord's representative also testified that the tenant caused damages to the unit and has neglected to remove garbage. The landlord's representative claimed that the tenant was not maintaining the rental premises in a clean condition. The landlord's representative stated that they gave the tenant a written notice to clean the premises and remove the garbage on 10-May-2024 to be completed on or by the 13-May-2024.
11. The landlord's representative testified that they gave the tenant a termination notice under Section 24 of the *Act* personally on 23-May-2024 as there were several incidents between the tenant and other tenants, including verbal altercations, being intoxicated and disruptive behavior in shared space. The landlord's representative stated that current situation with the tenant disrupted the peaceful enjoyment of the premises by other tenants.

Analysis

12. The relevant subsections of Section 22 of the *Residential Tenancies Act, 2018* state:

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 specific date not less than 5 days after the notice has been served.

17. Based on the landlord's testimony, the tenant complied with the landlord's written warning to clean the premises within the allowed timeframe. Therefore, as the tenant fulfilled the request to complete the cleaning on 13-May-2024 and with regards to Section 22 as stated above, I find that the landlord issued an invalid termination notice. For this reason, I find that the termination notice is not a valid notice.

18. The relevant subsection of Section 24 of the *Residential Tenancies Act, 2018* state:

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.

19. With regards to Section 24 as stated above, the landlord has an obligation to submit evidence to support their claim. At the hearing, no such evidence was presented. There were no sworn statements and no witnesses called. Therefore, I find that the landlord failed to fulfill their obligation to justify issuing the termination notice under the grounds of interference of peaceful enjoyment and reasonable privacy. For this reason, I find that the termination notice is not a valid notice.

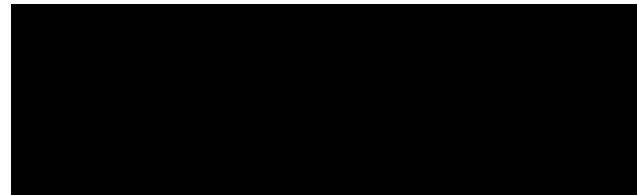
Decision

20. The termination notices are not valid.

21. The landlord's claim for vacant possession of the rented premises does not succeed.

July 5, 2024

Date



Oksana Tkachuk, Adjudicator
Residential Tenancies Office