

Residential Tenancies Tribunal

Application 2024-0552-NL
Application 2024-0618-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 9:04 a.m. on 22-July-2024.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, attended via teleconference.
3. The respondent and the counter applicant, [REDACTED], hereinafter referred to as “the landlord” attended via teleconference.
4. The landlord called two witnesses during the hearing – [REDACTED] (witness 1) and [REDACTED] (witness 2).

Preliminary Matters

5. The tenant submitted two affidavits with her application stating that she had served the landlord with the notice of the hearing electronically, via email; [REDACTED] on 1-July-2024 and that she had served the landlord via prepaid registered mail, tracking number # [REDACTED] on 3-July-2024 (TT#1). The landlord agreed receiving the notice of the hearing on both dates. In accordance with the *Residential Tenancies Act, 2018*, this is a good service, and we proceed with the hearing.
6. The landlord submitted affidavit with his application stating that he had served the tenant with the notice of the hearing electronically, via message to + [REDACTED] on 17-July-2024 (LL#1). The tenant agreed receiving the notice of the hearing on that date, however the 10-day rule was not followed by the landlord. The tenant waived the 10-day rule, and we proceed with the hearing.
7. There is a written fixed term rental agreement, which commenced on 1-December-2023, with a move out date of 31-December-2024, however the tenancy started in March 2021. Rent is \$1200.00 per month, and the parties verbally agreed that the tenant will pay rent by partial payments on the 1st, 16th, and 20th of each month. A security deposit of \$600.00 was collected in the beginning of the tenancy in March-2021 and is in landlord’s possession.

Issues before the Tribunal

8. The tenant is seeking:

- Validity of termination notice.

9. The landlord is seeking:

- An Order for Vacant Possession of the rented premises.

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

11. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy.

Issue # 1: Validity of termination notice / Vacant Possession of the Rented Premises

Relevant Submissions:

12. The tenant submitted a copy of termination notice under Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy. The notice is signed by the landlord and dated 5-July-2024 and was served personally on that day, with a termination date of 11-July-2024 (TT#2).

Landlord's Position:

13. The landlord testified that the tenant was interfering with peaceful enjoyment of other tenants residing in the downstairs apartment. The landlord stated that other tenants communicated vague concerns about the noise. The landlord asserted that on several occasions the tenant was reportedly very noisy, raised her voice early in the morning and during nighttime. The landlord mentioned that the previous tenant, who moved out in June 2023, had similar concerns about disturbance, and the current tenants living downstairs have expressed the same issues. Consequently, the landlord stated that he is seeking the tenant's eviction to ensure that the other tenants can live peacefully and without inconvenience due to disturbance in their peaceful enjoyment. The landlord requested to call the witness 1 and witness 2.

14. Witness 1, who resides downstairs, reported frequent disturbances from the upstairs unit. Witness 1 described the noise as involving loud music, screaming, often starting as early as 7 a.m. and continuing throughout the day and into night. The witness 1 stated that there were incidents of loud noises, such as furniture moving and screaming at 3 a.m. on a couple of occasions. The witness 1 stated that despite multiple requests to reduce the noise, the disturbance persisted. As the result, witness 1 affirmed that this disturbance has upset her to the point that she has considered vacating the property if the tenant will be staying in the unit.

15. Witness 2 stated that she moved into the downstairs apartment in April 2024. The witness 2 reported that the upstairs tenant has been consistently disruptive since she moved in, particularly during the night. This has made it difficult for witness 2 to concentrate and work

from home, which is her primary work environment. The witness 2 described the disturbance as sometimes frightening, with yelling coming from upstairs apartment. The witness 2 indicated that if the current tenant remains, she will be forced to move out. The witness 2 mentioned specific incidents where she sent messages to the upstairs tenant: once on July 4th to request an end to the yelling, and again on July 6th at 3:37 a.m. due to excessive noise.

Tenant's Position:

16. The tenant agreed that she received the termination notice on 5-July-2024, however she disputed that she caused any disturbance to other tenants. The tenant stated that she has two small children, and any noises occurring during the day are typical for a family with young children. Additionally, the tenant admitted that she sometimes raises voice at her children, particularly in challenging or potentially dangerous situations. The tenant asserts that this is a normal part of her parenting approach and does not constitute a disturbance. The tenant disputes having received any warnings or messages from other tenants or the landlord regarding noise disturbance. The tenant stated that she received 2 messages from witness 1 about reducing noise levels. The tenant affirmed that her children nap in the afternoon and go to bed by 8 p.m., with her own bedtime at 10 p.m. The tenant stated that she does not host parties and firmly believes that no other noises from her household could warrant an eviction.

Analysis

17. Section 24 of the *Residential Tenancies Act, 2018* states:

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.

18. Based on the testimony provided by the witnesses regarding the frequent disturbance, noises, and screaming from the tenant, I find that the landlord has demonstrated that the tenant's behavior has interfered with the peaceful enjoyment and reasonable privacy of other tenants. I find that the witnesses testimony provides sufficient evidence to support the landlord's claim. In accordance with Section 24 of the *Residential Tenancies Act, 2018* as stated above, I find that the termination notice meets the requirements of the Act and is a valid notice.

Decision

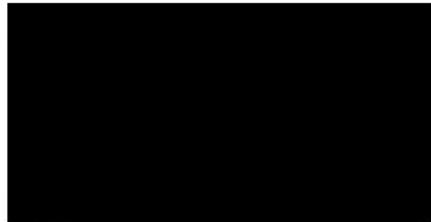
19. The termination notice is a valid notice.

20. The landlord's claim for an order for vacant possession of the rented premises succeeds.

21. The tenant shall vacate the rental premises immediately.
22. 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.

July 24, 2024

Date



Oksana Tkachuk, Adjudicator
Residential Tenancies Office