

Residential Tenancies Tribunal

Application 2024-0575-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was held on 16 July 2024 at 9:04 AM.
2. The applicants, [REDACTED], hereinafter referred to as "landlord1", and [REDACTED] [REDACTED], hereinafter referred to as "landlord2", attended via teleconference. The landlords called a witness, [REDACTED], hereinafter referred to as "the landlords witness".
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", attended via teleconference.

Preliminary Matters

4. The details of the claim were presented as a written fixed term agreement (**Exhibit L # 1**) ending on 14 March 2025 with rent set at \$1,000.00 due on the 15th of each month. There was a security deposit collected on this tenancy on 13 March 2024 in the amount of \$500.00 still in the possession of the landlords.
5. The landlords submitted an affidavit (**Exhibit L # 2**) with their application stating the tenant had been served electronically at 1:47 PM on 5 July 2024 [REDACTED]. The tenant did not dispute receipt of the Application for Dispute Resolution.
6. In a proceeding under the *Residential Tenancies Act*, 2018, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Issues before the Tribunal

7. The landlords are seeking a determination of the validity of termination notice and an Order of Vacant Possession of the rented premises.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in Sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
9. Also considered and referred to in this decision are Sections 24, 34, 35 and 42 of the *Act* as well as Policy 7-05, *Peaceful Enjoyment, Interference* of the *Residential Tenancies Program*.

Issue 1: Vacant Possession of the Rental Premises

Landlords Position

10. Landlord1 testified the tenant has rented the one-bedroom basement apartment since 15 March 2024 and in April 2024, she had been contacted by the upstairs tenant with concerns about potential smoking by the tenant inside the basement apartment (**Exhibit L # 3**). Smoking was not permitted inside the rental as indicated on the rental agreement. Following this, landlord1 stated they had been contacted about a noise complaints related to shouting, what sounded like aggressive rearranging of furniture and door slamming between 2:00 and 4:00 AM (**Exhibit L # 4**). Along with their application, the landlords also provided an audio recording of yelling and noises heard by the upstairs tenants coming from inside the basement apartment (**Exhibit L # 5**).
11. Landlord1 stated after being contacted on more than one occasion by the upstairs tenants, she issued the tenant electronically a Landlord's Notice to Terminate Early-Cause under Section 24 of the *Act* on 21 June 2024 with a request for the tenant to be out by 29 June 2024 (**Exhibit L # 6**).
12. The landlords witness stated he and his brother rent the upstairs apartment above the tenant. He testified that he could not confirm or deny that the tenant had smoked inside the rental unit but did state he had been woken up through the night on more than one occasion due to noise from the basement apartment. The landlords witness expressed his concern with this as he was being impacted by the actions of the tenant.
13. Landlord2 testified the actions of the tenant was not only having an impact on the peaceful enjoyment of the upstairs tenants, but also on the landlords as the upstairs tenants have contacted them with multiple concerns related to the actions of the tenant and individuals she permitted inside her rental.

Tenant Position

14. The tenant disputed she smoked inside of the basement apartment and testified she smoked outside the rental. She also disputed being issued a written rental agreement after taking occupancy. She did not dispute receiving the Section 24 Notice to terminate as described by the landlords. The tenant stated her boyfriend frequents the basement apartment and there had been situations of verbal disagreement between her and this individual.

Analysis

15. The validity of the termination notice is determined by its compliance with the notice requirements identified in Section 24 and 34 as well as the service requirements identified in section 35. Section 24 requires that when a premises is rented for a fixed term the landlord can 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 serviced. On examination of the notice issued and submitted into evidence (**Exhibit L # 6**), I find the notice was served on 21 June 2024 with a termination date of 29 June 2024. The notice issued is in clear compliance with the requirements of section 24. Sections 24(2) and 34 identify the technical requirements of the termination notice. On examination, I find that all the criteria have been met, and the notice was served in compliance with the Act.
16. Statutory condition 7(a), set out in section 10(1) of the *Residential Tenancies Act, 2018* states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following conditions governing the residential premises apply:

...

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 of the property of which they form a part.

According to Residential Tenancies Policy 7-05 Peaceful Enjoyment, Interference of peaceful enjoyment is defined as, “an ongoing disturbance or activity, outside of normal everyday living, caused by the landlord or tenant. Peaceful enjoyment may include but is not limited to the following: (i) excessive noise; (ii) aggressive or obnoxious behavior; or (iii) threats and harassment.

17. While there is evidence to indicate potential concerns of smoking inside the basement apartment which the landlords provided along with their application (**Exhibit L # 3**), the tenant disputed this claim. As well, the landlords own witness offered testimony the tenant smoked outside the property. I do not accept the allegation that the tenant was smoking inside the basement apartment.
18. However, I do accept the testimony and evidence (**Exhibit L # 4 & L # 5**) of the landlords and the witness that the tenant’s actions in relation to noise are having a negative impact on the peaceful enjoyment of the upstairs tenants. The tenant’s own testimony demonstrated there had been verbal disputes between herself and boyfriend on more than one occasion. It is reasonable to believe that the shouting, slamming doors and making noise late at night would interfere with the other tenant’s enjoyment of their rental property.

19. I agree with the landlord and find that the tenant's behavior is negatively impacting the other tenants in the building. The landlord's claim for vacant possession succeeds. The tenant should have vacated the property by 29 June 2024.

Decision

20. The landlords claim for vacant possession succeeds.

Summary of Decision

21. The landlords are entitled to the following:

- An order for vacant possession of the rented premises;
- The tenant shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriffs should the landlords be required to have the Sheriff enforce the attached Order of Possession.

24 July 2024

Date

Michael Reddy, Adjudicator
Residential Tenancies Office