

Residential Tenancies Tribunal

Application 2024-0578-NL & 2024-0663-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 5-August-2024 at 1:48 pm.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, also attended via teleconference, along with her her authorized representative [REDACTED]. Also present by teleconference was [REDACTED].

Preliminary Matters

4. The respondent acknowledged they received notice of this hearing more than ten days before the hearing date.
5. A second respondent, [REDACTED], was properly served but did not attend the teleconference. I was informed that this person had moved out of the premises already and therefore had no interest in the hearing. Hereinafter, this person is referred to as "the second tenant" and he and the tenant are collectively referred to as the tenants.
6. The landlord made an application for an order of vacant possession and the tenant counterclaimed for the validity of the termination notice. As a valid termination notice is essential to receiving an order of vacant possession, both issues are dealt with together below.

Issues before the Tribunal

7. Should the landlord's claim for an order of vacant possession succeed?

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 and 34 of the *Act*, reproduced below:

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

10. The landlord submits that she issued a valid termination notice, that the move out date on the termination notice has elapsed, that the tenant has not yet vacated the premises, and that she is therefore entitled to an order of vacant possession. The landlord testified that after she issued a notice of termination under s. 18, the tenants began to interfere with her right to peacefully enjoy the property, and she therefore issued a notice under s. 24.

Tenant's Position

11. The tenant testified that she and the landlord used to be on good terms. On 16-January-2024 the tenant says the hot water boiler malfunctioned and that the tenants were without hot water for 2-3 months. She ended up issuing a request for repairs on 17-March-2024 and says that a week after this “things started hitting the fan.” The tenant agreed that the landlord completed the specific repairs requested but says the premises were left in a condition still worse than what they had originally rented.

Analysis

12. In order to receive an order of vacant possession, a landlord must have submitted a valid termination notice. To be valid, a termination notice must comply with all relevant sections of the *Act*. The landlord submitted a copy of multiple termination notices which I have marked LL#59 and LL#60. LL#60 is the most recent notice issued and I will therefore begin my analysis there.
13. LL#60 is in writing in the form prescribed by the minister. It contains the name and address of the recipients. It identifies the residential premises for which it was given. It identifies the section of the *Act* it was given under as s. 24. It therefore complies with s. 34 of the *Act*.
14. LL#60 was signed by the landlord. It states the date on which the rental agreement is to terminate and the tenant is required to vacate the premises. It was served electronically in accordance with s. 35(2)(f) of the *Act*. It therefore complies with s. 24(2) of the *Act*.
15. LL#60 was issued on 11-July-2024 and gives a move out date of 17-July-2024, which is not less than five days after the notice was served. LL#60 therefore complies with the timeline requirement under s. 24(1).
16. The only remaining issue determining the validity of the notice is whether or not the tenants contravened statutory condition 7(a) as set out in section 10 of the *Act*, which reads 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 the residential premises is a basement apartment and the landlord lives above the premises. She says the tenants interfered with her rights by denying lawful entry to the premises and by harassing her. A number of screenshots were provided showing text conversations between the landlord and the tenants (landlord's exhibits 01-06, 08-10, 11-33, 35-44, and 48-56). I note in particular that the landlord's exhibit 33 shows a snippet of a conversation from 23-June-2024. A message apparently from the tenant says at 8:13 am "no one is to come in this house today notice nor [sic]." The landlord responds to the effect that the tenant cannot refuse a 24 notice. The tenant appears to respond "I sure can I'll stand in front of the door lol" and "no one is to come in here while I live here." This conversation continues into landlord's exhibit 35 in the same vein.
18. In landlord's exhibit 39, the landlord says "we will be here at 2pm for entry" (emphasis in original). The tenant appears to reply "NOT A [expletive] XHANCE [sic] you will have to fight me lol." In landlord's exhibit 40 the tenant appears to say "no one is stepping their foot in this house" and "you're only going to embarrass whoever's coming because we're going to make a scene."

19. Landlord's exhibit 56 is a video-only clip from a security camera taken on 2-July-2024. The tenants are shown leaving the premises and the second tenant stops to say something towards the upper part of the building. Landlord's exhibit 57 is the audio recording from the same time. A person, apparently the second tenant, can be heard stating loudly "I swear to the two of you upstairs by everything that is holy, the next time I see either one of your faces I'm gonna break 'em. I'm just letting you know [unintelligible] [expletive] the two of ya up. I'm getting dressed, I'm coming upstairs and I'll smash you."
20. The tenant defends her text messages. She says the landlord and she had always enjoyed an informal relationship and were friends, and implied they would talk to each other in a candid or playful style that might include cursing and language that might, in another context, be taken as rude. She also emphasizes that the tenants had recent traumatic events, including the death of a close family member, which influenced their actions. She maintains that she never interfered with the landlord's right to peaceful enjoyment.
21. The tenant testified that the second tenant moved out on the 2nd. She says that she feels the eviction was about the second tenant, not her, and that as he is no longer residing at the premises she should not be held responsible for his actions.
22. The tenant's messages clearly go beyond the bounds of a friendly, casual relationship. They are aggressive and harassing. In LL#19, the landlord specifically asks the tenant to restrict correspondence to matters about the rental premises. The tenant replies with 7 messages over the course of 2 minutes. 3 of the messages contain expletives, one says "I won't be nice [smiling emoji]," and two more are insults to the landlord's character. This is harassment.
23. Considering the evidence in its totality, I am satisfied on a balance of probabilities that the tenant interfered with the landlord's rights, and that this interference was unreasonable. LL#60 is therefore valid.

Decision

24. A valid termination notice was issued which gives a move out date of 17-July-2024. The rental agreement terminated on that date. Insofar as the tenant is still residing at the premises, they are doing so illegally.
25. The landlord's application for an order of vacant possession succeeds.

Summary of Decision

26. The tenant shall vacate the premises immediately.
27. 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.

28. The landlord is granted an order of possession.

20-August-2024

Date


Seren Cahill
Residential Tenancies Office