

Residential Tenancies Tribunal

Application 2024-0444-NL& 2024-0501-NL

Michael Reddy
Adjudicator

Introduction

1. Hearing was held on 12 July 2024 at 10:00 AM via teleconference. The hearing was to adjudicate two separate applications: 2024-0444-NL and 2024-0501-NL.
2. [REDACTED], hereinafter referred to as "the landlord", attended the hearing. [REDACTED] did not attend the hearing.
3. [REDACTED], hereinafter referred to as "tenant1", attended the hearing. [REDACTED], hereinafter referred to as "tenant2", attended the hearing. Both tenants had two support workers present: [REDACTED], hereinafter referred to as "Support worker1", who attended the hearing and [REDACTED], hereinafter referred to as "Support Worker2", who attended the hearing.

Preliminary Matters

4. The landlord submitted an affidavit indicating tenant1 was personally served with an Application for Dispute Resolution on 20 June 2024 (**Exhibit L # 1**). Tenant1 did not dispute receipt of this notification.
5. The tenants submitted an affidavit indicating landlord1 was personally served with an Application for Dispute Resolution on 2 July 2024. As determined in the *Residential Tenancies Act*, 2018, this is not appropriate service. Landlord1 did not waive service requirements. Application 2024-0444-NL will not be adjudicated in this decision.
6. There was dispute about the rental agreement as the landlord testified there was a verbal monthly rental agreement which commenced on 22 December 2023. The tenants claimed there was a written rental agreement which they provided with their application (**Exhibit T # 1**). Rent is set at \$1,100.00, due on the first of each month for the two-bedroom basement apartment. There was a security deposit collected on the tenancy of \$550.00.
7. 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 account of events is more likely than not to have happened.

Issues before the Tribunal

8. The landlord is seeking the following:

- An Order of Vacant Possession/Possession of the rental property.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in Sections 46 and 47 of the *Residential Tenancies Act, 2018*.
10. Also, relevant and considered in this claim are Sections 18, 24, 34 and 35 of the *Act*, along with Policies 07-004 and 07-005 of the *Residential Tenancies Program*.

Issue 1: Vacant Possession of the Rental Premises

Landlord Position

11. The landlord testified there was a verbal rental agreement when the tenants took occupancy of the rental premises in December 2023. On 8 July 2024, the rental property was sold to a new landlord who is also the current upstairs tenant. The landlord requested this individual to attend the hearing to offer testimony which was disputed by the tenants. As the landlord provided a sworn statement from the witness there was no requirement for participation. The landlord stated the tenant of the upstairs apartment of the rental property had initially expressed concerns with smoking inside the basement apartment in December 2023. The landlord stated since this time, she has contacted him about ongoing concerns of smoking inside the rental premises.
12. Along with his application, the landlord provided a no cause notice on 1 May 2024 with a request for the tenants to vacate 90 days following the date of the notice (**Exhibit L # 2**). The landlord testified he personally served this notice by placing it on the door of the rental unit.
13. The landlord provided a signed witness statement from the upstairs tenant (**Exhibit L # 3**) indicating concerns with alleged smoking within the rental basement unit and her observation of cigarette butts inside a bedroom.
14. The landlord stated he personally served tenant1 a Landlord's Notice to Terminate Early- Cause under Section 24 of the *Act* on 6 June 2024 with a request for the tenants to vacate by 12 June 2024 (**Exhibit L # 4**).

Tenants Position

15. Tenant1 did not dispute receipt of the notices issued by the landlord. She did dispute the first notice and the Section 24 notice. She stated the Section 24 notice did not have

her full name. Tenant1 also disputed there had been smoking inside the basement apartment.

16. Support Worker1 disputed the termination notices issued to the tenants due to his claims there was no smoking inside the rental which he was aware of and one notice not having the full name of tenant1. Support Worker2 testified he had frequented the rental on multiple occasions and never observed the tenants smoking inside, only outside. He stated he informed both tenants on multiple occasions of the landlord's request for no smoking inside the rental. Support Worker2 stated there was a written rental agreement in place which the tenants supplied with their application (**Exhibit T # 1**). He stated there was no indication on that rental agreement of the expectations of no smoking inside the rental premises.

Analysis

17. The 1 May 2024 notice was issued under section 18 of the Residential Tenancies Act, which states:

Notice of termination of rental agreement

18. (2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises

(a) not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;

(b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and

(c) not less than 3 months before the end of the term where the residential premises is rented for a fixed term.

.....

(9) In addition to the requirements under section 34, a notice under this section shall be signed by the person providing the notice;

(b) be given not later than the first day of a rental period;

(c) state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and

(d) 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.

18. To be valid, a termination notice must comply with all relevant sections of the Act. The 1 May 2024 termination notice is not in compliance with section 18(9) (c) as it does not state the date on which the rental agreement is to terminate, and the tenant is required to vacate the premises. Further, it does not comply with section 34 (b) and (d) as it does not state the name(s) of the recipient(s) nor the section of the Act under which the notice was given. For these reasons, the termination notice of 1 May 2024 is rendered invalid.
19. The landlord issued the tenants a second notice, on 6 June 2024, under Section 24 (**Exhibit L # 4**) citing interference with peaceful enjoyment.

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.

20. The Section 24 Notice (**Exhibit L # 4**) was personally served to tenant1 on 6 June 2024 with a request for the tenant to vacate by 12 June 2024. This means of service, the information contained within the notice and the timeline complies with the requirements of the Act.
21. The only remaining issue is whether the tenants violated statutory condition 7(a) as set out in subsection 10(1) 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 which they form a part.

22. In a claim of interference with peaceful enjoyment and reasonable privacy it is incumbent on the applicant to show cause for termination. The landlord did provide a witness who reported via sworn statement (Exhibit L # 3) asking the tenants to stop smoking on more than one occasion, as she could smell cigarette smoke in the upstairs bathrooms and in the basement bathroom and rec room. She further stated that she had notified the landlord accordingly. Additionally, she noted that when doing a walk through of the apartment prior to purchasing the residence there was a strong smell of cigarette smoke,

she saw cigarette butts, that the smell of cigarette smoke has worsened, and she has detected marijuana smoke as well.

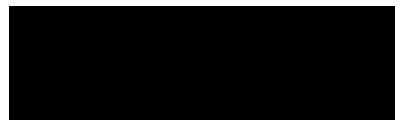
23. The tenants dispute they had smoked inside the rental. While there were questions surrounding the rental agreement and the expectations of this agreement, Support Worker1 testified on more than one occasion, he informed the tenants that smoking inside the rental was not permitted.
24. Based on the evidence in totality, it is possible that the tenants may be smoking in the apartment, which may be a breach of material term of the rental arrangement in place. However, the termination for cause specified interference with peaceful enjoyment and reasonable privacy. policy 07-005, interference of peaceful enjoyment is defined, *“an ongoing unreasonable disturbance or activity, outside of normal everyday living, caused by the landlord or tenant or someone permitted on the premises by the landlord or tenant”*.
25. While I do not dispute the evidence of the landlord’s witness, I do question the impact this is having on the upstairs tenant (witness), and I find that the evidence presented does not demonstrate, on the balance of probabilities, to that of an “on-going unreasonable disturbance or activity.
26. Considering the evidence in its totality, I find the landlord has not met the burden of proof to demonstrate that the tenants have interfered with the peaceful enjoyment of the upstairs tenant The 6 June 2024 notice of termination is rendered invalid.

Decision

27. The landlord’s application for an order of vacant possession fails.

6 August 2024

Date



Michael Reddy, Adjudicator
Residential Tenancies Office