

Residential Tenancies Tribunal

Application 2024-0594-NL & 2024-0604-NL

Michael Reddy
Adjudicator

Introduction

1. Hearing was heard on 19 August 2024 via teleconference. The hearing will adjudicate two separate applications: 2024-0594-NL and 2024-0604-NL.
2. [REDACTED], represented by [REDACTED], hereinafter referred to as "Landlord1", and [REDACTED], hereinafter referred to as "Landlord2", both attended the hearing.
3. [REDACTED], hereinafter referred to as "the tenant", attended the hearing.

Preliminary Matters

4. The landlords submitted an affidavit (LL # 1) with their application indicating the tenant was personally served on 8 August 2024 an Application for Dispute Resolution. The tenant did not dispute service.
5. The tenant did not supply an affidavit with his application and the landlords testified they did not receive the Application for Dispute Resolution. The landlords did not waive. In accordance with the Residential Tenancies Act, 2018, the tenant did not serve properly, however the landlord had good service. As the tenant's issue of validity will be dealt with in the landlord's application for vacant possession, I proceeded with the hearing.
6. The details of the claim were presented as a written monthly rental agreement which commenced on 1 April 2023 with rent set at \$598.00 due on the 1st of each month. There was a security deposit collected on this tenancy on 1 April 2023 in the amount of \$298.00 still in the possession of the landlords. The tenant remains in the rental premises on the date of the hearing.
7. In a proceeding under the *Residential Tenancies Act, 2018*, the applicants have the burden of proof. This means the applicant has the responsibility to prove that the outcomes 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 their account of events are more likely than not to have happened.

Issues before the Tribunal

8. The landlords are seeking an Order of Vacant Possession of the rented premises.

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 (the Act)*.
10. 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

Landlord Position

11. The landlords testified the tenant has rented the one-bedroom apartment since 1 April 2023. Landlord2 testified on 15 April 2024, the tenant had been issued a written noise complaint. She stated during his tenancy, the staff of [REDACTED] had spoken on multiple occasions to the tenant about concerns with noise. Landlord1 stated on 2 May 2024, the tenant was issued, by personal service, a Notice of Termination under Section 18 of the Act (LL # 2) with a request for the tenant to vacate by 2 August 2024. He testified his organization was contacted on multiple occasions by other tenants of the rental premises about noise concerns from the tenant.
12. Landlord2 testified in June 2024, there had been an assault which occurred on the grounds of the rental premises which resulted in police being on scene. She stated that the tenant was not responsible for this criminal activity, however the tenant other individuals he was socializing with who were not tenants of the premises, were "blocking the doorway" preventing other tenants from entering and exiting. Landlord2 testified that multiple tenants on the first floor of the rental premises, contacted [REDACTED] to express their concerns.
13. Landlord1 testified that the tenant, on multiple occasions, has been observed drinking in or near the entry way of the rental premises which staff had spoken with him about. He stated the tenant had been issued two Notices under Section 24, on 25 June 2024 via personal service. The first Section 24 Notice requested for the tenant to vacate by 30 June 2024 (LL # 3). The second Section 24 Notice requested for the tenant to vacate by 2 July 2024 (LL # 4).

Tenant Position

14. The tenant did not dispute receipt of any of the three Notices. He did not dispute he had received a written noise complaint from [REDACTED] and he did not dispute there had been situations when he was drinking in or near the entry way of the rental premises. He testified that his actions were not related to a police presence in June 2024.

Analysis

15. All three notices issued to the tenant by the landlords (one Section 18 and two Section 24), had been provided to the tenant by personal service. The validity of termination notice is determined by its compliance with the notice requirements identified in Sections 18, 24 and 34 as well as the service requirements identified in Section 35. The landlords issued a Section 18 Notice on 2 May 2024 with a request for the tenant to be out by 2 August 2024. Subsequently, two Section 24 Notices were issued to the tenant on 25 June 2024. As defined in Policy 07-001 of the Residential Tenancies Program: Notice of Termination, "*If a termination notice is already in place and a second notice is issued by either party whereby the termination date is earlier than that specified in the first notice, then so long as this second notice is valid, the tenant is required to vacate on the date specified in the second notice*". Therefore, the notice issued and submitted into evidence (LL # 4), served on 25 June 2024 with a termination date of 2 July 2024 will be first analyzed to determine validity.
16. Section 24(2) and 34 identify the technical requirements of the termination notice. The termination date was given not less than 5 days, after the notice was serviced which meets the requirements as set out in the Act. LL # 4 was signed by the landlord, stated the date on which the rental agreement terminates and the tenant is required to vacate, and was served in accordance with Section 35 of the Act. It therefore complies with Section 24(2).

Furthermore, it contains the name and address of the recipient, identifies the residential premises for which it was given, and the Section of the Act it was given under as Section 24. It therefore complies with Section 24(2).
17. 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.

18. There was testimony offered by both parties that the tenant had been issued previous noise complaints, had been spoken to by staff of [REDACTED] about expectations of behaviors as a tenant of the rental premises, and that the tenant had been issued termination notices as indicated herein.
19. Considering the evidence in its totality, I accept that the tenant has interfered with the other tenants right to peaceful enjoyment of the rental premises. The second Section 24 Notice issued on 25 June 2024 with a request to vacate on 2 July 2024 is valid. As this is a valid notice, an assessment of the validity of termination notice issued on 2 May 2024 to vacate by 2 August 2024 is not required.

Decision

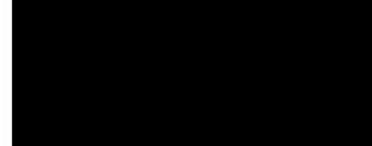
20. The landlords application for an order of vacant possession succeeds.

Summary of Decision

21. The tenant shall vacate the 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.
23. The landlord is granted an order of possession.

23 September 2024

Date



Michael Reddy, Adjudicator
Residential Tenancies Office