

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0032-01

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:00 PM on 13 October 2021 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. She was represented by [REDACTED] ([REDACTED]).
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", also participated.

Issues before the Tribunal

4. The landlord is seeking an order for vacant possession of the rented premises.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case are sections 10 and 24 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

7. The landlord called the following witness:
 - [REDACTED] – [REDACTED]'s spouse and the landlord's son-in-law.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

8. The landlord stated that she had entered into a verbal rental agreement with the tenant on 05 January 2021. The agreed rent was set at \$750.00 and the landlord stated that the tenant had paid a security deposit of \$375.00 on 14 January 2021.
9. The rental unit is a basement apartment and the landlord lives in the upstairs portion of the home.
10. █ stated that the landlord had been having several issues with the tenant over the past summer and she stated that the landlord feels that her home has become a target for burglary and arson. She stated that her mother had been living at this home for over 30 years, and she never had any trouble until she started renting to the tenant.
11. █ was called as a witness and he described 2 incidents which happened at the rental unit. The first incident occurred on 02 May 2021. On that day, he was visiting the landlord to share a meal, and he stated that the tenant was intoxicated and had invited herself into the landlord's home. He testified that at one point, the tenant fell over and bumped her face on a cupboard, and later she again fell into the kitchen island, knocking over food and utensils. █ stated that the tenant was belligerent and angry and she refused to leave the landlord's home.
12. █ testified that the tenant is often intoxicated when he visits the landlord and he claimed that things are so bad now that he feels uncomfortable bringing the landlord's grandchildren to her home to visit. He also complained that there are numerous people constantly coming and going from the tenant's apartment.
13. The second incident occurred on 21 August 2021. █ stated that he was a volunteer firefighter and he stated that on this night, at about 2:00 AM, a call was placed to the fire department concerning a fire at the landlord's address. When he arrived, they discovered that someone had taken some kindling and a bag of potato chips and had set it on fire with lighter fluid. The fire was extinguished, but not before it had caused damage to the siding on the side of the landlord's house.
14. █ stated that when the firefighters arrived at the unit, they were greeted by the tenant, who was again intoxicated, and she offered drinks to everyone. The RCMP were also called by the fire department, and the responding officers were also offered drinks by the tenant.
15. The fire department determined that the fire was likely arson, though the RCMP were unable to make a determination as to who had set the fire. █ stated that

when questioned about the fire, the tenant stated: "it was [REDACTED] it was [REDACTED]—I know it was him". [REDACTED] stated that [REDACTED] was the tenant's ex-boyfriend.

16. [REDACTED] also complained that, like the fire which the arsonist had set, the tenant would often have small, dangerous fires in the yard, using kindling and lighter fluid.
17. [REDACTED] also stated that there had been a burglary at the tenant's apartment. Although no damage was caused, the landlord stated that she was told that money was stolen from the tenant's unit. She also reported that a barbecue and a propane tank were stolen from the landlord's yard. And on another occasion, the landlord witnessed a man enter the landlord's backyard and he stole a bicycle. That man was identified as [REDACTED], the person who had allegedly set the fire on the side of the house.
18. Because of these issues, the landlord issued the tenant a termination notice on 22 August 2021 and a copy of that notice was submitted with her application ([REDACTED] #1). That notice was issued under section 24 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 28 August 2021.
19. The landlord stated that the tenant has not vacated as required and she is seeking and order for vacant possession of the rented premises.

The Tenant's Position

20. The tenant did not contest [REDACTED]'s account of the incident which had occurred on 02 May 2021. She did state, though, that she has a good relationship with [REDACTED] children and that she often gives them treats and lets them play with her cat.
21. Regarding the complaints about her drinking and the coming and going of her guests, the tenant argued that she is free to have a drink whenever she wishes and she is also allowed to have people visit her at her apartment.
22. She also pointed out that the RCMP investigation into the arson was "inconclusive" and there was no evidence to suggest she had caused the fire or that it was caused by [REDACTED]. She also stated that although someone had broken into her apartment and stolen some money, she did not know who had carried out that crime and she doubted that any of her friends would have done it.
23. The tenant did admit that [REDACTED] had stolen a bicycle from the landlord's back yard. She denied, though, that she had ever dated [REDACTED] and claimed that he is merely a friend. She acknowledged that he had been a guest at her apartment on a couple of occasions and that she sometimes borrows his truck, but she intimated that they are not close friends and that [REDACTED] has some psychological issues.
24. The tenant claimed that she is a good tenant, that she does not make any loud noises and that no damage had been caused to her apartment. For those reasons, she argued that the landlord cannot evict her on such short notice.

Analysis

25. 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 statutory 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 or the property of which they form a part.

and according to section 24 of this Act:

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.

26. I accept the testimony of the landlord and her witness that the tenant would oftentimes be intoxicated at the property and that she would have small fires in the yard. I also accept their claim that the tenant would have people coming and going to her apartment at all hours of the day and night.

27. Furthermore, I accept the landlord's claim that she had no issues with burglaries, thefts or arson at her home, for over 30 years, until the tenant moved in and the tenant admitted that [REDACTED], a sometimes-guest at her unit, was responsible for stealing the bicycle.
28. I also accept the testimony of [REDACTED] that the landlord's quiet and peaceful enjoyment is disturbed by all the comings and goings at the tenant's unit and by her intoxicated behaviour.
29. Based on the foregoing, that is based on the descriptions of the tenant's behaviour, that a guest of hers had stolen property belonging to the landlord and that the landlord feels fearful in her own home, I find that the landlord was in a position, on 22 August 2021, to issue the tenant a termination notice under this section of the *Act*.
30. As the notice meets all the requirement set out in this section of the *Act*, it is a valid notice.

Decision

31. The landlord's claim for an order for vacant possession of the rented premises succeeds.
32. 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.

Issue 2: Hearing Expenses

33. The landlord paid a fee of \$20.00 to file this application and that receipt is on file. As the landlord's claim has been successful, she is authorized to retain that amount of the security deposit.

21 October 2021

Date

[REDACTED]
John R. Cook
Residential Tenancies Tribunal