

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-046-03

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:12 am on 25 August 2021 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for vacant possession of the rented premises, and
 - A payment of utilities in the amount of \$160.90,

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 10, 20 and 24 of the *Residential Tenancies Act, 2018* and rule 29 of the Rules of the Supreme Court, 1986.

Preliminary Matters

6. The tenant was not present or represented at the hearing. I was able to reach him by telephone and he informed me that he was unable to participate. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) a respondent to an application must be served with claim and notice

of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as he has been properly served. The landlord submitted an affidavit with his application stating that the tenant was served with notice of the hearing on 13 August 2021 and he has had 12 days to provide a response. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.

Preliminary Matters

7. The landlord called the following witnesses:
[REDACTED]

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

8. The landlord stated that he had entered into a month-to-month rental agreement with the tenant on 01 June 2021. The agreed rent was set at \$725.00 per month and the landlord testified that the tenant had paid a security deposit of \$335.00.
9. The landlord stated that he manages 2 rental complexes which are adjacent to each other, [REDACTED] each containing 3 apartments. The tenant resides in unit [REDACTED]. He testified that since the tenant moved into that unit, he had been receiving numerous complaints from the residents in the other apartments. These complaints concerned loud noises coming from the tenant's unit which could be heard all night long and the fact that visitors were constantly coming and going to the tenant's unit. He stated that the police have been at the unit on multiple occasions and he suspects that there may be illegal drug trafficking taking place.
10. [REDACTED] who resides at [REDACTED] was called as a witness and she corroborated the landlord's reports about the complaints he had been receiving. She testified that on 2 occasions, once on 29 June 2021 and again on 13 August 2021, she was able to hear screaming and loud banging coming from the tenant's unit and she characterized those altercations as incidents of domestic abuse. She stated that the police were called to the tenant's unit as a result.
11. [REDACTED] also stated that she believes that the tenant is involved in illegal drug activity and she stated that there are people hanging around the complex who she believes to be drug dealers. She testified that she has heard these people discussing drugs and carrying out violent activities. On one occasion, one of the

tenant's visitors stated that he would go to her window and "set her apartment on fire".

12. [REDACTED] stated that she does not feel safe in her unit and she stated that she is scared of the tenant and the people he allows to hang around the complex.
13. [REDACTED] the resident in [REDACTED] gave an account similar to [REDACTED]. He also reported that there is a lot of loud noises and yelling coming from the tenant's unit at all hours of the day and he reiterated that the police have been there many times. He also testified that he believes that there is illegal drug trafficking taking place at the tenant's unit and he stated that he has seen used needles left around the complex.
14. He claimed that all the residents at the 2 complexes are very nervous now that the tenant has moved in and that this sort of illicit activity is routinely taking place. [REDACTED] partner, also testified that she feels nervous going outside of her unit and she stated that whenever she returns from work, she has [REDACTED] watching out the window to ensure that she gets to her apartment safely. She also complained about the loud noises coming from the tenant's unit and she stated that she has to use earplugs to get to sleep.
15. Because of these complaints, the landlord issued the tenant a termination notice on 23 July 2021 and a copy of that notice was submitted with his application. That notice was issued under section 24 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 29 July 2021.
16. The landlord stated that the tenant has not vacated as required and he is seeking and order for vacant possession of the rented premises.

Analysis

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 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.*

18. I accept the testimony of the landlord's witnesses in this matter and I find that there have been numerous loud disturbances coming from the tenant's unit which have been interfering with the quiet and peaceful enjoyment of the other residents at these 2 complexes. I also accept the landlord's witness's testimony that the police have had to visit the tenant's unit on several occasions and that they feel unsafe going out of doors.
19. I find that that sort of continuous, noisy behaviour is unreasonable, especially given the close proximity of the other residents at the complex to the tenant's unit. Accordingly, I find that the landlord was in a position, on 23 July 2021, to issue the tenant a termination notice under this section of the *Act*.
20. As the notice meets all the requirement set out in this section of the *Act*, it is a valid notice.

Decision

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

Issue 2: Utilities - \$160.90

Relevant Submissions

23. The landlord stated that tenant was responsible for paying his own electrical utilities and he was required to have the electricity account switched into his name when he took possession of the property in June 2021. He stated that the tenant never did have that account placed in his name and the landlord continues to be billed for the electricity the tenant is using.
24. With his application, the landlord submitted a bill from Newfoundland Power showing that he has been charged \$159.91 since the tenant moved in.

Analysis and Decision

25. I accept the testimony and evidence of the landlord in this matter and I find that the tenant owes \$159.91 to the landlord for the electrical utilities.

Issue 3: Hearing Expenses

26. The landlord paid a fee of \$20.00 to file this application. As his claim has been successful, he is authorized to retain that amount from the security deposit.

Issue 4: Security Deposit

27. The landlord stated that the tenant had paid a security deposit totally \$335.00 before he took possession of the unit in June 2021, even though the amount originally required to be paid was \$400.00. As the landlord's claim for utilities and hearing expenses has succeeded, that deposit shall be disposed of as outlined in this decision and attached order.

Summary of Decision

28. The landlord is entitled to the following:
 - An order for vacant possession of the rented premises,
 - 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.

- The landlord is also authorized to retain \$179.91 of the security deposit in compensation for utilities and hearing expenses.

31 August 2021

Date

