

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0080-03

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:12 a.m. on 17-January-2022.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant" attended by teleconference.
4. The landlord also brought forward three witnesses: [REDACTED] and [REDACTED] hereinafter referred to as witness1, witness2 and witness3 respectively. The witnesses also attended by teleconference.

Preliminary Matters

5. The landlord submitted an affidavit (LL#01) stating that he had witness2 serve the tenant with notification of the hearing on 04-January-2022. The tenant verified this service.

Issues before the Tribunal

6. The landlord is seeking vacant possession of the rental premises.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory Conditions, and Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy, as well as, Residential Tenancies Policy 7.

Issue 1: Vacant Possession of the Rental Premises

Landlord's Position

9. The landlord stated that he entered into a verbal rental agreement with the tenant for a weekly term, for \$125.00, the tenant moved in on 15-June-2021. The landlord said he agreed to payment every second week for \$250.00. He said that the tenant fell behind in the payments and they made arrangements to recoup the loss by the tenant paying extra. The tenant is up to date with his rental payments. The tenant did not pay a security deposit.
10. The landlord said that the witnesses and the tenant all share one house where each person pays rent on their own room and they share the use of the kitchen.
11. The landlord submitted the termination notice (LL#02) that he had served on the tenant. The landlord asked witness1 to serve the tenant and she did so by placing it outside his bedroom door in the hallway. The notice was dated and signed for 03-December-2021 with a termination date of 10-December-2021. It is written on a notice to terminate early cause form for interference with peaceful enjoyment.
12. The landlord said he has had about a dozen calls from each of his tenants with complaints about the behavior of the tenant when he is drinking.
13. The landlord said that the tenant, when drinking, plagues him with phone calls all hours of the day and night. He said it has gotten so bad, that he has had to block the tenant's number. He said that the tenant becomes aggressive when intoxicated and has threatened him. The landlord said, due to these threats, he now brings someone with him, as a witness, whenever he has to go to the house.
14. Witness1 is a tenant in the house, she moved in on 24-September-2021. She says that she has made complaints to the landlord, about the tenant, approximately 15 times since she has moved in.
15. Witness1 said that the tenant is up all night partying and drinking. She said that there are about 4 regular people who come to the house with the tenant. When he has people in, the door to the house is left unlocked, she is concerned about the people having free access to the house. She has had to call in sick to work on two separate occasions due to the noise.
16. She said when the tenant has been drinking he has; left the stove on, he smokes everywhere in the house, although it is against the rules and he has urinated on the bathroom floor. She said she knows it is him who urinated in the middle of the floor because at that time, it was just the two of them living on that floor and when she came home there was a puddle in the middle of the floor.
17. She said that she has tried to speak to him but when he is drinking he is aggressive and threatening. When she tries to speak to him when he is sober, he acts like she is "looney tunes" and denies that any of these things are happening.
18. Witness1 said on 30-December-2021 she had all she could take with the living environment. A friend picked her up and allowed her to stay at their house until this matter was resolved. She said at the time she left, the tenant had been partying since Christmas Day.

19. Witness2 said that the tenant has one or two people with him and they are up all night partying and drinking. She has been awakened by the noise.
20. Witness2 confirms witness1's statement about the tenant leaving the burner on the stove and she went on to say that, he was passed out on the kitchen table and there were plastic utensils close to the hot burner.
21. Witness2 said that he leaves a mess from his parties and doesn't clean up after himself.
22. Witness2 is now staying with family since the first week of December, because she can no longer deal with the situation in the house.
23. Witness3 lives at the house with his partner. He is a bartender and had heard stories about the tenant and his behavior from other staff.
24. It is witness3's belief that the tenant is an alcoholic and once drinking he becomes incoherent and obnoxious.
25. Witness3 says that the tenant bangs on his door all hours of the day and night looking for cigarettes.
26. Witness3 pays additional rent to rent the living room area, as well as, his bedroom. The tenant was in there one night partying and drinking with his friends. Witness3 said he finally had to call the landlord to have the people leave. The next day he had to clean the mess left from the party.
27. Witness3 said that the door is left open at night. He said he leaves the door unlocked in the daytime, but the tenant unlocks it at night. He said that one of the guys who is hanging out with the tenant, at the house, is banned from the property.
28. Witness3 said that his partner is afraid of the tenant and his friends. When she comes home from work she will call him on his phone and have him come to the door to walk her to their room.
29. Witness3 said another roommate is refusing to live there until this situation is resolved.

Tenant's Position

30. The tenant disputes the amount he is paying for rent and states he has a written agreement (he did not submit the agreement). The tenant said he is paying \$275.00 every two weeks for a total of \$550.00 a month.
31. The tenant doesn't agree with the landlord's statements in paragraph 13, he said that he can't contact the landlord because the landlord has blocked his number, so there is no way he can be calling all hours of the day and night. He said that the landlord brings a "bodyguard" with him to the house for intimidation.
32. The tenant disputes what witness1 is reporting in paragraphs 14 - 18. He said he is on Social Assistance and can't afford to drink, he only has enough money for rent and food. He says witness1 has never tried to speak to him and he doesn't know how she can determine if it was him who urinated on the floor.

33. The tenant disputes the statements from witness2, he said he never sees her and doesn't understand how she can know if these things are happening, because she never leaves her room.
34. The tenant also disputes the statements from witness3 in paragraphs 23 -29.
35. He said when he had his friends in the living room, he thought it was a common area and they only had 2 or 3 beers. When the landlord came he told his friends that they had to leave.
36. The tenant said he had surgery on his leg and that maybe the issues with his leg are why they think he is intoxicated. He said he is taking pain medications and is asleep most of the time. He also said he doesn't have the time or money to be drinking like they are saying.

Analysis

37. The testimony from the landlord and three witnesses show a situation that is consistently stated from each individual. Each of the witnesses were brought into the hearing only for their testimony and they did not hear each other testify. This consistent narrative holds a lot of weight in their testimonies.
38. The tenant is either denying his actions due to no memory of the events, or for some other reason that this board is not equipped to determine.
39. The witnesses are not only impacted by the behaviors of the tenant, two of the witnesses are paying rent for rooms that they are unable to use until this matter is resolved.
40. 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 -

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.

....

41. 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, cause by the landlord or the tenant". Peaceful enjoyment may include, but is not limited to the following: (i) excessive noise; (ii) aggressive or obnoxious behaviour; or (iii) threats and harassment.
42. It is reasonable to determine that the tenant's behavior while intoxicated is disrupting the others in the house and is interfering with their peaceful enjoyment of the property.
43. Section 24 of the *Residential Tenancies Act, 2018*, states:

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.

44. The landlord's termination notice (LL#02) meets the standard of the *Act* and is a valid notice; the tenant should have moved on 10-December-2021.

Summary of Decision

45. The tenant shall move immediately.
46. 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.
47. The landlord will be issued an Order of Possession.

January 19, 2022

Date