

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0259-05

John R. Cook
Adjudicator

Introduction

1. Hearing was called at 9:15 am on July 28, 2021 via teleconference.
2. The applicant, [REDACTED] represented by [REDACTED] hereinafter referred to as "the landlord," attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant," did not attend.

Issues before the Tribunal

4. The landlord is seeking an order for vacant possession of the rented premises due to tenant contravening the peaceful enjoyment and reasonable privacy.

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* and rule 29 of the Rules of the Supreme Court, 1986.

Preliminary Matters

7. The tenant was not present or represented at the hearing and I was unable to reach him by telephone at the start of the hearing. 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)

respondents 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 [REDACTED] #03) stating that the tenant was served with notice of the hearing, by Canada Post, through registered mail, on 08 July 2021. Although the tenant never did collect that letter, section 42.(6) of the *Residential Tenancies Act, 2018* states that it is nevertheless considered to have been served on the tenant on the 5th day after mailing. 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.

8. The landlord called the following witnesses:
 - [REDACTED] – resident manager at the rental complex

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

9. The landlord stated that he entered a written agreement for a monthly rental with the tenant in February 2017. The current rent is \$790.00 a month with a security deposit of \$562.50 paid on Feb.23, 2017.
10. Included in the application, the landlord submitted a copy of the termination notice [REDACTED] #02) which he indicated was served in person on the date signed: June 9, 2021.
11. The termination notice was issued under section 24 of the *Residential Tenancies Act, 2018* (notice where tenant contravenes peaceful enjoyment and reasonable privacy) with an effective termination date of June 15, 2021.
12. The landlord submitted a video [REDACTED] #04) showing an individual entering the lobby of the apartment building, forcefully opening a mailbox cabinet that contains approximately 20 tenant's mailboxes in the lobby of the apartment building in question. This individual then riffles through the mail and takes some of the letters belonging to other tenants.
13. The Residential Manager, [REDACTED], was sworn into the hearing and testified that the tenant was the individual shown in the video.
14. The landlord states that this violates the peaceful enjoyment and reasonable privacy of the tenants.
15. The landlord stated that the tenant has not moved from the apartment as required and is seeking an order for vacant possession of the premises.

Analysis

16. 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.

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

18. I agree with the landlord that the incident in the video does violate peaceful enjoyment and reasonable privacy of the other tenants in the apartment building.

19. As the notice meets the requirements set out in this section of the *Act*, it was properly served, it is a valid notice and the tenant ought to have vacated the apartment on June 15, 2021.

Decision

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

22. The landlord incurred the cost of \$20.00 to file this application and provided the receipt for same [REDACTED] #01).
23. As the claim is successful the tenant shall pay the total of these expenses from the damage deposit.

Summary of Decision

24. 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 authorized to retain \$20.00 of the damage deposit.

03 August 2021

Date

