

Residential Tenancies Tribunal

Application
Application [REDACTED]

Decision 21-0396-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:45 a.m. on 14 October, 2021.
2. The applicant, [REDACTED] represented by [REDACTED] [REDACTED] I, hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant" did not attend.
4. The landlord called a witness, [REDACTED] she will hereinafter be referred to as "the witness."

Preliminary Matters

5. 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 [REDACTED] #01) with her application stating that they had served the tenant with notice of the hearing, by prepaid registered mail, on 22 September 2021, they also provided the tracking information ([REDACTED] #02) which indicated that the package was not picked up. 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.
6. The tenant had filed the original claim [REDACTED] as he did not attend and is unable to present his evidence, this file has been dismissed. The landlord did attend and will present evidence to this board for file [REDACTED]

Issues before the Tribunal

7. The landlord is seeking the following:
 - Vacant Possession
 - Hearing Expenses Reimbursed

Legislation and Policy

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

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

10. The landlord and tenant entered a written rental agreement from December 01, 2020 to November 30, 221 for \$810.00 per month pay own utilities. The agreement is signed on December 11, 2020. The rent is due on the 1st of each month. There was a security deposit of \$420.00 paid on December 01, 2020 and the landlord is in possession of the security deposit.
11. The landlord submitted a letter “Termination Notice to Tenant” (████#04). This is a written notice, addressed to the tenant, with the apartment address included, it states that the notice is “in accordance with Section 24 of the *Residential Tenancies Act*” it is dated for 23-August-2021 with a termination date of 31-August-2021. The landlord states that the termination notice was served by the Caretaker on the date signed 23-August-2021.
12. The landlord stated that there have been a number of complaints about the tenant over the past year. The landlord had 12 incident reports on file and 8 of those reports were for noise, fighting and parties.
13. The landlord stated on the 20-August-2021 there was a complaint that someone had removed fire extinguishers throughout the apartment building. The police were called and a file was opened. The landlord was unable to get information about the police file for the hearing.
14. The landlord said she received 3 separate incident reports from her staff about the removal of the fire extinguishers.
15. The landlord called a Witness to testify about the incident of the fire extinguishers. The Witness said on the day in question, her son had come to visit. Within a few minutes of him entering her apartment he heard a noise by the apartment door, out in the common hall area. When he went to the door there was a note left for him from the tenant asking

him to call him. When the son opened the door he could see that the fire extinguisher had been torn from the wall, but there was no one in the hallway.

16. The Witness said that she had heard from the maintenance person that there were fire extinguishers torn from many of the common hallways in the apartment building.
17. The Witness said that the Tenant is often drinking in the common areas, she avoids him, and people are unpredictable when they have been drinking.

Analysis

18. The landlord provided testimony about incident reports given to her about the date in question. She had received 3 separate reports about the tearing of the fire extinguishers from the wall. None of the staff who wrote the reports were called to testify. All of the fire extinguishers were torn from the hallway walls and had to be replaced at the expense of the Landlord.
19. The landlord did call a Witness who has had negative experiences with the Tenant. The Witness did testify that her son arrived minutes before the fire extinguisher was torn from the wall. He also received a note from the Tenant at about the same time that the fire extinguisher went missing from the wall next to the Witness' apartment.
20. The Witness and her son did not see the Tenant tear the fire extinguisher from the wall.
21. The police did not provide information, for the file, about the fire extinguishers being torn from the walls.
22. The landlord also provided testimony that there have been numerous complaints from other tenants about noise and issues with the Tenant. The landlord did not call the individuals who filed complaints or staff who completed incident reports to give testimony.
23. 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.

....

24. The burden of proof lies with the applicant to prove that the Tenant is interfering with the Peaceful Enjoyment of the other tenants. Although the landlord has received numerous complaints about the actions of the Tenant, she did not provide witnesses or documentation directly tying the Tenant to the noise and complaints that she had received.
25. The Witness did indicate that the fire extinguishers were there on the wall when her son arrived. She also said that when the fire extinguisher from outside her apartment suddenly went missing, a note was left from the Tenant, under the apartment door, these two occurrences happened at about the same time. However, when her son went to the door, he did not see the Tenant in the hall. The Witness also has no idea what happened to the fire extinguishers after they were torn from the wall.
26. The landlord did not have information from the police on whether the Tenant, or anyone, was charged, or the primary suspect, or named on the police file.
27. The evidence and testimony provided by the applicant doesn't meet the burden of proof, there is no definitive evidence that shows that the Tenant was involved in the taking of the fire extinguishers and there was no testimony or evidence to show that the Tenant has interfered with the peaceful enjoyment of other tenants in the apartment building.

Decision

28. The landlord did not meet the burden of proof in this file. The claim for vacant possession fails.

Issue 2: Hearing Expenses

29. The landlord incurred the cost of \$20.00 to file this application and provided the receipt for same [REDACTED] #05).
30. As the claim is unsuccessful the tenant is not responsible for the hearing expense.

Summary of Decision

31. The landlord's claim for vacant possession fails, the termination notice is not valid.

October 21, 2021

Date

