

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0397-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:45 a.m. on 13-October- 2021.
2. The applicant, [REDACTED] represented by [REDACTED] [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant" did not attend.
4. Also present is a witness for the landlord, [REDACTED] hereinafter 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 pre-paid registered mail on September 22, 2021. The landlord also provided a tracking number and record of tracking ([REDACTED] 02) which indicates that the package was not picked up and was returned to the sender on 28-September-2021. Although the package wasn't picked up it is considered served after 5 days. 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.

Issues before the Tribunal

6. The landlord is seeking:
 - Premises vacated due to interference with peaceful enjoyment and reasonable privacy

- Hearing expenses reimbursed

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 case are sections 10.7, Statutory Conditions and 24, Notice Where Tenant Contravenes Peaceful Enjoyment and Reasonable Privacy, of the *Residential Tenancies Act, 2018*., as well as, Section 7-5 of the Residential Tenancies Policy Manual.

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

9. The landlord and tenant entered into a rental agreement (█ #03) beginning January 01, 2013. Initially the rent was set at \$750.00 per month with utilities included. Presently, the rent has now increased to \$805.00 per month with utilities included. The rental period is from the 1st of each month to the end. The rent is due on the first. There was a security deposit of \$375.00 paid on December 01, 2021.
10. On the Saturday prior to the Termination Notice being signed there was an incident at the apartment building, the Landlord subsequently received incident reports from her staff saying that the tenant and his guests were creating a lot of noise in the common area behind the building. They were drinking, smoking marijuana, playing loud music and there was a lot of noise.
11. The Landlord said that the Caretaker reported that when he approached the group to request they behave appropriately, they became verbally abusive and threatening.
12. The Landlord stated the group was raucous and were witnessed cutting down trees in neighboring yards.
13. The Landlord reports that there have been ongoing issues with this tenant and she has received a number of complaints over the years. In 2020 she received numerous complaints, mostly concerning marijuana smoke. This incident was the final straw.
14. The landlord called a Witness, she is an older resident who has lived in the building for 24 years. She says that there were many days when the tenant was creating a lot of noise in the back common area.
15. On the Saturday in question, the Witness said, before she was leaving she had heard the noise in the backyard common area and looked out at them, from her upstairs apartment window. She observed the Tenant and his friends partying and having a BBQ. She saw them cutting down the neighbor's trees. She noticed that there was a gas can very close to where they were barbequing. She took pictures, however they were not

provided to this board by the landlord, After taking the pictures she said she went downstairs and spoke to the Caretaker.

16. When she went downstairs she had to pass the area where the Tenant and his friends were, as she was walking by the Caretaker was trying to speak with the group, she could hear the Tenant and his guests swearing at the Caretaker and threatening him.
17. She spoke with the Caretaker and he told her he was upset about how he was being spoken to by the group. She then decided that she was going to send in a complaint to the landlord. She was fed up with being afraid to go downstairs and the tenant lives close to where they get mail; so she is afraid to get her mail when he is around.
18. The Witness said that there is a smell of marijuana smoke coming from the Tenant's apartment most of the time (smoking is not allowed in the apartments). He props open his door and the smoke comes out into the hallways. She approached him about the door being open. Her grandson was coming over and the smell of smoke was really bad. She has a preexisting health condition and finds it difficult to breath with smoke around. When she approached him he cursed at her and told her to leave.
19. The Witness said that during Covid the Tenant's girlfriend was using the laundry facilities and she wasn't collecting her belongings once they were dry. This was tying up the dryer, so the Witness approached her about this. The tenant was angry about her speaking with the girlfriend and he came to speak to the Witness about this. He was very angry and confrontational.
20. Another of his guests, a lady, was very aggressive with her as well.
21. She is now moving after 24 years, she is fed up with being afraid in the building and unable to go out in the back common area or even get her mail without dealing with the smell of the marijuana smoke, or the Tenant being drunk and cursing and swearing on her.
22. She has spoken with the Caretaker and believes that the intimidation and threats are one of the reasons he decided to quit. She was afraid for him when he would have to deal with people who treated him this way.
23. The landlord stated that she has a number of complaints from tenants and incident reports from staff, she struggled to find other tenants to testify as they are afraid of this tenant. She has also had staff finish employment and they are no longer available to testify.

Analysis

24. Section 7-5 of the Residential Tenancies Policy Manual defines Interference with peaceful enjoyment as: "an ongoing disturbance or activity, outside of normal everyday living
.... May include but is not limited to the following:
 - Excessive noise

- Aggressive or obnoxious behavior
- Threats and harassment

25. The testimony of the witness corroborates the hearsay evidence provided by the landlord. The landlord has had a changeover in staff and was unable to provide a staff as a witness to the issues outlined against the tenant. She also did not submit the incident reports that she had on file.

26. The landlord testified that she struggled to find tenants to appear as witnesses because although she had a number of complaints, the individuals did not want to be involved or named due to fear of reprisals.

27. The testimony of the Witness holds a lot of weight in this application. The Witness was present to see the treatment of the Caretaker, she has also been personally impacted by the behavior of the tenant and his guests. The Witness was unable to use common areas of the building, when she did, the Tenant and his guests verbally assaulted her and she felt threatened. In addition to this, she has a preexisting health condition that was being aggravated by the smoke coming from the apartment in question. The Landlord relayed that there was a no smoking rule in the building.

28. The rental agreement (■#03) specifically states in clause 10. "The Tenant may, at the sole discretion of the Landlord, use the common areas and facilities' accessories thereto, in common with the other Tenants of the Building, the right of use shall not form part of this Lease, and shall at time be subject to immediate revocation at the sole discretion of the Landlord, without cause, without claim for compensation, indemnity or reduction of rent. The Landlord shall have absolute right to determine and regulate the times when and the manner in which the Tenant and other persons entitled thereto shall use such common areas and facilities' accessories thereto." This agreement is signed by both the Landlord and Tenant. The Tenant does not have a right to be in the common area with their visitors, this is a privilege, and this is entirely at the discretion of the Landlord. The Caretaker speaks to the Tenant and asks them to behave appropriately. The Caretaker has this conversation because of not only what he is witnessing but also, at the request of other tenants who are being impacted by what is happening. The Tenant is breeching his contract by not complying with the Caretaker.

29. Also in Landlord's Rules and Regulations section of the rental agreement (■#03) (6.) "Visitors are the responsibility of the Tenant," so the behavior of the Tenant's guests are his responsibility as well.

30. 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.

....

31. The tenant and his guests were taking over the common areas and keeping the Witness from accessing these areas by their threatening and combative behavior. According to Statutory Condition 10.7 the Tenant was unreasonably interfering with the right and reasonable privacy of other tenants.
32. Section 24 of the *Residential Tenancies Act; 2018*, says:

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.

33. The notice was served to the tenant with the necessary information provided in the termination notice in accordance with the *Act*.

Decision

34. I find that the Tenant did violate the Peaceful Enjoyment of others in the building.
35. The landlord's letter of termination does follow the guidelines set out in Section 24 of the *Residential Tenancies Act; 2018*
36. The landlord's claim for an order for vacant possession of the rented premises succeeds.
37. The tenant shall vacate the property immediately.

38. 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

39. The landlord incurred the cost of \$20.00 to file this application and provided the receipt for same [REDACTED] #05).

40. As the claim is successful the tenant shall pay the total of these expenses from the damage deposit.

Summary of Decision

41. 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 for the hearing fees she incurred.

October 22, 2021
Date

