

Residential Tenancies Tribunal

Application [REDACTED]
Application [REDACTED]

Decision 21-0496-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:15 a.m. on 05-January-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED], hereinafter referred to as “tenant1 and tenant2” did not attend.
4. The tenants had submitted an Authorized Representative form (TT#01) naming [REDACTED] [REDACTED] as their representative, she did not attend.
5. The landlord submitted sworn written testimony from another tenant, [REDACTED] [REDACTED], hereinafter referred to as the witness.

Preliminary Matters

6. The tenants were not present or represented at the hearing and I was unable to reach them or the authorized representative 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 they have been properly served. The landlord submitted an affidavit (LL#01) with his application stating that he had another tenant serve the tenants with notice of the hearing, in person, on 24-December-2021. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
7. The tenants had filed the original claim [REDACTED], as they did not attend and are unable to present their evidence, this file has been dismissed. The landlord did attend and will present evidence to this board for file [REDACTED]

8. The landlord amended his application to reflect the current amount of rent owing from \$750.00 to \$2,250.00.

Issues before the Tribunal

9. The landlord is seeking:

- Rent paid \$2,250.00
- Security deposit applied against monies owed \$375.00
- Vacant possession of rental premises
- Hearing expenses \$85.00

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

11. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit, and Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy.

Issue 1: Rent paid \$2,250.00

Relevant Submissions

12. The landlord said he entered into a written rental agreement with the tenants on 22-July-2021. He provided the written agreement (LL#02) as well as a list of rules and regulations (LL#03) that is given to tenants along with their rental agreement. The agreement is for a monthly term from the 1st day of each month to the last day. The rent is for \$750.00 a month, pay own utilities, and is due on the first day of each month. The tenants moved in on 22-July-2021 and they paid a damage deposit of \$375.00 on 16-July-2021 as per the submitted rent ledger (LL#04).

13. After the tenants moved in they made arrangements with the landlord to pay the rent in two installments of \$375.00 on the 1st day of the month and again the middle of the month. The landlord provided a rent ledger (LL#04) which shows this new pay schedule; see below:

Rent ledger

Date	Action	Amount	total
22-Jul-21	rent due 10 days	\$ 240.00	\$ 240.00
22-Jul-21	rent paid	\$ (240.00)	\$ -
1-Aug-21	rent due	\$ 750.00	\$ 750.00
4-Aug-21	rent paid	\$ (375.00)	\$ 375.00
17-Aug-21	rent paid	\$ (375.00)	\$ -

1-Sep-21	rent due	\$	750.00	\$	750.00
1-Sep-21	rent paid	\$	(375.00)	\$	375.00
17-Sep-21	rent paid	\$	(375.00)	\$	-
1-Oct-21	rent due	\$	750.00	\$	750.00
1-Oct-21	rent paid	\$	(375.00)	\$	375.00
16-Oct-21	rent paid	\$	(375.00)	\$	-
1-Nov-21	rent due	\$	750.00	\$	750.00
1-Dec-21	rent due	\$	750.00	\$	1,500.00
1-Jan-22	rent due to hearing date	\$	123.30	\$	1,623.30
2-Jan-22	rent paid	\$	(375.00)	\$	1,248.30

Daily rate \$750 x 12 months = \$9,000.00

\$9,000.00 divided by 365 days = \$24.66

\$24.66 x 5 days in January = \$123.30

14. The landlord had served the tenants with a termination notice (See Issue 3) and the tenants have not paid rent since that time. The landlord reports he recently had a discussion with tenant1 and she said that they were looking for a new place, she then made a payment on January 2, 2022 as an act of good faith.

Analysis

15. Non-payment of rent is a violation of the rental agreement.

16. I accept the landlord's testimony and submitted rent ledger (LL#04) as proof of the rent payments made.

17. The tenants owe rent, up to and including the date of the hearing in the amount of \$1,248.30 as per the table in paragraph 13.

Decision

18. The tenants shall pay the landlord the outstanding rent totaling \$1,248.30.

Issue 2: Security deposit applied against monies owed \$375.00

Relevant Submissions

19. The landlord's rental ledger (LL#04) indicates that the tenants paid the landlord \$375.00 security deposit on 16-July-2021 prior to moving into the apartment. He testified that he is still in possession of the security deposit.

20. The landlord has proven to the board that the tenants have rent owing and the decision in paragraph 18 shows an outstanding balance of \$1,248.30.

21. The landlord is applying to retain the security deposit against the monies owed.

Analysis

22. Section 14 of the Residential Tenancies Act, 2018, says:

Security deposit

14. (10) Where a landlord believes he or she has a claim for all or part of the security deposit,

(a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or

(b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.

23. As the landlord's claim for rent has been successful, he shall retain the full amount of the security deposit against monies owed.

Decision

24. The landlord shall retain the full security deposit, \$375.00, towards rent owed.

Issue 3: Vacant Possession of the Rental Premises

Relevant Submissions

25. The landlord provided into evidence a Landlord's notice to terminate early – cause form (LL#05). The notice is dated and signed on 22-October-2021 with a termination date of 31-October-2021. The reason marked for the early termination is for interference with peaceful enjoyment. The landlord said that he had another tenant serve this notice and he reported back to the landlord that he had delivered it to the tenant on 22-October-2021.
26. The landlord said that he has three separate apartments in the building. There are three floors and each floor is a unit. He has a tenant in the downstairs, who he had deliver the notices. On the second floor are tenant1 and tenant2. On the top floor is the witness.
27. The landlord reports that there were issues with tenant1 and tenant2 from the start. He said when they first moved in there was a tremendous amount of traffic to their door, all hours of the day and night.
28. The witness, from the upstairs apartment provided sworn written testimony (LL#06) about the issues she has experienced.
29. In the witness' testimony she says she has lived in the apartment for over 20 years. She said that the other apartments have been rented to both good and bad people over her time there.

30. She says she feels fearful and unsafe in her home, due to the behavior of tenant2. She has had issues with tenant2 around smoking and him blocking the driveway. He is very confrontational and aggressive with her. She feels that he is threatening.
31. In addition to this, she says that she has an allergy to smoke and on three separate occasions the apartment below her have caused her to have a reaction to the smoke. She says that smoking isn't permitted; this is also the testimony of the landlord and is supported by the rules and regulations form (LL#03) provided by the landlord. He said in paragraph 12 that he provides this document to tenants with their signed rental agreement.
32. In her written submission (LL#06) she said on 02-October-2021 a group of people were banging on her door. She didn't open the door. They then went to tenant1 and tenant2's apartment. Soon after a fight broke out and the fence was damaged.
33. The landlord said that the day after this occurrence, when he went to the property, he saw that part of the fence was knocked down, there was a baseball bat left there, two small vacuums and other debris.
34. 08-October-2021 the witness reports she could hear screaming and crying from tenant1 and tenant2's apartment. She was concerned and contacted the landlord.
35. The landlord said that he called the police at that time. When the police arrived, the landlord said that tenant2 had left and tenant1 was okay. She talked to the police and he didn't think there were any charges laid.
36. 22-October-2021, in the early morning hours, 3:30 – 4:30 a.m., the witness said that she could hear an argument. She could hear crying and loud voices, she also heard cursing and swearing. She then heard running like someone was trying to get away. She then noticed Tenant1 was then in the middle of the street yelling out "why are you doing this to me." The witness once again called the landlord, she was concerned and decided to call the police herself out of concern for tenant1. Around 4:30 – 5:00 a.m. she said that they were back in the apartment and the arguing continued.
37. The landlord said after this incident, he felt the only way to restore peace was to evict tenant1 and tenant2. The termination notice (LL#05) was given to those tenants the next day.
38. On 03-November-2021 the witness reports that she heard arguing, screaming and yelling, as well as, loud thuds. She could hear tenant1 pleading and yelling. She once again called the police. This time tenant2 was arrested.
39. The landlord said he was talking on the phone with the witness when the argument broke out, he could tell that she was distracted and then she said "oh my god, there's something happening down below." She reported to him what she heard. She said that she was going to call the police. He said that tenant2 was arrested, but he was back in the apartment within a week.

40. He said that since that time, he has been quieter but there are occasionally further incidents.
41. The landlord said a couple of weeks ago, there was another incident, and he thinks that tenant1 called the police. Tenant2 was told to stay away from the apartment.
42. About a month ago the landlord reports he was at the building speaking with another tenant. Tenant2 arrived and after noticing that the landlord's car was in the driveway, Tenant2 came to the other apartment and demanded that the landlord move his car. The landlord said he told him, that isn't your personal parking spot, the house and the parking spot belongs to him and he didn't move his car. Tenant2 then pulled his car into the driveway very close to the landlord's bumper, keeping him blocked in. The landlord said to tenant2 to move his car; he refused and went into his apartment. The landlord was going to call the RNC to have the car removed. The landlord said he could hear arguing and then tenant2 came out, got in his car and the tires screeched as he pulled away.
43. The landlord said that this past fall there was a lot of traffic coming and going into the apartments, so he placed a padlock on the gate and gave the tenants a copy of the key, to allow them to control all the comings and goings. Just before the hearing he heard from the witness and she told him that the padlock and her deadbolt have been filled with glue. She is unable to lock her door and she can't leave the yard because the pad lock is glued. She had called the police and they are on the way. The landlord can't say for sure that it is tenant2 who did this, but he believes that he is the most likely of the tenants.
44. The witness had told the landlord that last night she was shoveling the snow and tenant2 pulled in and almost struck her in the driveway. They had words. She said he was banging on her door at 3:00 a.m. and she wouldn't answer the door. Then her lock was glued this morning.
45. The landlord said that the witness is afraid to go out of her apartment. She calls her friend who lives across the street to watch out when she has to come and go.
46. The landlord thinks that tenant2 is not a good guy, he has pointed out that in the rules and regulations (LL#03) that they had broken every one of the rules except the "no dogs" rule.
47. The landlord is concerned for the witness and has told her to avoid tenant2.

Analysis

48. 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

49. The witness testimony that she is fearful in her home, as well as, the ongoing disturbances of people coming and going at late night hours, people knocking on her door in the middle of the night, a group of people fighting in the yard, coupled with a potential domestic abuse situation in the apartment directly below her, all could reasonably be described as outside of normal everyday living.

50. The witness has voiced concerns about tenant2's aggressive and threatening behavior. She has also modified her life and no longer can come and go from her apartment out of fear for her safety. As this hearing was occurring, she is literally confined to her apartment as her locks and the pad lock on the gate have been tampered with and she has called the police to come investigate.

51. The landlord's testimony of his interactions with tenant2, give insight into his temperament. The landlord describes tenant2 as explosive and unpredictable. The landlord's perception of tenant2, validates the concerns raised by the witness. The landlord has also shown concern for the safety of the witness.

52. Tenant2 is unreasonably interfering with the peaceful enjoyment of the witness.

53. 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

- be signed by the landlord;
- state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and
- be served in accordance with section 35.

54. The notice (LL#05) was served to the tenant with the necessary information provided in the termination notice in accordance with the *Act*.

Decision

55. I find that tenant2 did violate the Peaceful Enjoyment of others in the building.

56. The termination notice does follow the guidelines set out in Section 24 of the *Residential Tenancies Act; 2018*

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

58. The tenants shall vacate the property immediately.
59. The tenants 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.
60. The tenants shall pay a daily rate of rent of \$24.66, as calculated in the table in paragraph 13, beginning 06-January-2022, until such time as the landlord regains vacant possession of the premises.

Issue 4: Hearing Expenses \$85.00

Relevant Submissions

61. The landlord submitted the application fee (LL#07) of \$20.00. He also reported that he paid \$65.00 for the Commissioner of Oaths for the witness' statement.

Analysis

62. Although the landlord incurred hearing expenses of \$85.00, he only submitted a receipt for the application fee. His application was successful and the tenant will be responsible for the cost of the filing fee.

Decision

63. The landlord may retain \$20.00 from the tenants' security deposit for the cost of the hearing expenses.

Summary of Decision

64. The landlord is entitled to:

• Rent.....	\$1,248.30
• Hearing Expenses.....	20.00
• Less security deposit.....	<u>(375.00)</u>
• Total.....	<u>\$ 893.30</u>

- He shall retain the security deposit
And he will be given,
- An Order for Vacant Possession

The tenant shall:

- Pay the landlord \$893.30 for rent and hearing expenses
- Vacate the property immediately

- Pay a daily rate of rent, \$24.66, beginning 06-January-2022 until such time as the landlord regains possession of the property
- 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.

January 7, 2022

Date

