

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0546-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:26 AM on 15 December 2021 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord", participated in the hearing. She was represented by [REDACTED]
3. The respondent, [REDACTED] hereinafter referred to as "the tenant", also participated in the hearing.

Issues before the Tribunal

4. The landlord is seeking an order for vacant possession of the rented premises.

Preliminary Matters

5. The landlord called the following witness:
 - [REDACTED] landlord's brother-in-law

Legislation and Policy

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

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

8. The landlord stated that she had entered into a verbal rental agreement with the tenant on 01 June 2021. The agreed rent was set at \$500.00 per month. The landlord stated that the tenant's rent is being subsidized by a government agency and she receives \$735.00 each month from that agency and she then, in turn, hands over the difference of \$235.00 to the tenant each month.
9. The landlord stated that she rents a room to the tenant in the basement of her house, and that her son, [REDACTED] also resides in the basement with the tenant, while the landlord lives upstairs.
10. The landlord stated that she has been having numerous problems with the tenant since she moved into the property and she recounted some of those issues at the hearing.
11. One complaint the landlord made concerned the deadbolt on the main entrance door. She testified that on 2 occasions she had returned home and she was not able to gain entry as the deadbolt was locked. The landlord stated that she does not have a key to that deadbolt and stated that "it was set up through [REDACTED]. The landlord contended that the tenant had locked the deadbolt on those 2 occasions as there was no body else at the premises.
12. The landlord also complained that the tenant oftentimes comes into her unit and removes her possessions. She recounted one incident where the tenant had come up to the landlord's apartment with some scarfs, gloves and perfume, which she stated she had taken from the landlord's unit, and she apologized for her behaviour. The landlord stated that the tenant takes prescription drugs and she sometimes "flips out" and "goes crazy", and she intimated that these issues of theft can also be attributed to her drug-use.
13. The landlord also stated that because of the tenant's drug-use, she sleeps most of the day and she is up during the nights. She stated that when the tenant is awake at night, she is very loud and the landlord is able to hear her screaming and shouting.
14. She recounted an incident which occurred on 19 November 2021, after she had returned from the funeral of her foster-son, and she found the tenant in her bathroom going through her cupboards. She claimed that the tenant was very abusive towards her on that day, and she was calling her names and she had even pushed her over while she was trying to clean up the items the tenant had thrown onto her floor.

15. In the following days, the landlord stated that the police had to be called to the unit on 2 separate occasions. The first call was made on 20 November 2021 and the landlord stated that that call was made because the tenant had “flipped out” and she was argumentative and abusive towards the landlord. ■ testified that she was on the phone with the landlord on that day and she was able to hear the tenant screaming in her apartment. ■ stated that she was the one who had called the police on that day.
16. Because of all of these above incidents, the landlord issued the tenant a termination notice on 22 November 2021, and a copy of that notice was submitted with her application (■ #1). That notice was issued under section 24 of the *Residential Tenancies Act, 2018*, and it had an effective date of 30 November 2021.
17. The landlord testified that when she delivered that notice to the tenant she again became abusive and argumentative and again the police had to be called. ■ testified that she was at the landlord’s apartment on the day that the termination notice was delivered to the tenant and she corroborated the landlord’s claim that the tenant was yelling at the landlord calling her names, and ■ stated that the tenant was “completely out of control”. ■ stated that the landlord is fearful of the tenant and she claimed that the landlord can no longer have her friends visit her home because of the behaviour of the tenant.
18. The landlord’s brother-in-law, ■ was called as a witness and he corroborated some of the landlord’s testimony. He testified that on the day the tenant was served with the termination notice, the tenant was screaming and very abusive towards the landlord, and he claimed that this was typical behaviour of the tenant and he had witnessed it numerous times. ■ stated that the issue with the tenant is that when she takes her methadone she becomes a changed person and is loud and obnoxious.
19. The landlord stated that she is fearful of the tenant, she is having difficulty sleeping and her behaviour at her home is causing her stress. She is seeking an order for vacant possession of the rented premises.

The Tenant’s Position

20. The tenant stated that there was a written agreement between herself and the landlord and that agreement was running for a term of 1 year. The tenant stated that the agreed rent was set at \$735.00 and she denied that the landlord was turning over any portion of that rent to her.
21. With respect to the termination notice, the tenant denied that the landlord had issued her any notice on 22 November 2021 and she claimed that the first time she had seen that notice was on 28 November 2021 when ■ served her with the landlord’s application.

22. Regarding the landlord's complaints, the tenant denied all of the allegations being made against her.
23. She stated that she had no access to the upstairs unit where the landlord resides, and she claimed that the landlord has locks at the top of the stairs preventing her from accessing her unit. She also stated that the landlord also had locks installed on all the other doors in her apartment and even on the refrigerator. She argued that as she cannot get into the landlord's apartment, she also cannot lock the deadbolt to her door. In any case, she claimed that the landlord does have a key to that deadbolt.
24. The tenant also denied that she had been stealing things from the landlord's apartment. She again pointed out that there are locks on everything in the landlord's apartment and that she cannot access her unit from the basement because the door is locked. She did acknowledge that she had returned some of the landlord's possession to her on one occasion, but she claimed that she was merely returning some items that the landlord had left behind in the shared laundry room.
25. The tenant also denied the landlord's claim that she can be heard at night making noises. She testified that the only drug she takes is methadone, a prescription drug that allows her to live her life, and she is required to take a taxi every morning to go to a pharmacy to have her prescription filled. She claimed that she is asleep every night, through the night, until it is time to go to the pharmacy and she denied that she had been making any noise. She claimed that if the landlord can hear any noise coming from the basement apartment, it is caused by her son, [REDACTED], and the friends that he invites over to party and do drugs. The tenant stated that she would only wake in the night when [REDACTED]'s friends would come to the door of their downstairs unit.
26. With respect to the police visits, the tenant acknowledged that they had been to the apartment, but not because of her behaviour. She stated that the police had been visiting the unit because they had received calls out of concern for the welfare of the landlord's dog. The tenant denied that she had been abusive to the landlord and she denied that she had ever pushed her over.

Analysis

27. 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.***

28. I accept the landlord's corroborated testimony that there the tenant had had been causing numerous loud disturbances at the premises and that she had been verbally abusive towards the landlord. I also accept her corroborated testimony that the police had to be called to the unit on at least 2 occasions because of the tenant's behaviour.
29. That sort of loud and antisocial behaviour is clearly unreasonable and I accept the landlord's claim that that behaviour is causing her stress and is interfering with her quiet enjoyment of her home. Accordingly, I find that the landlord was in a position on 22 November 2021 to issue the tenant and termination notice under this section of the Act, and I accept her corroborated testimony that she had indeed delivered that notice to the tenant on that day, sparking another loud altercation.
30. As the termination notice meets all the requirement set out in this section of the Act, it is a valid notice.

Decision

31. The landlord's claim for an order for vacant possession of the rented premises succeeds.
32. 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

33. The landlord paid a fee of \$20.00 to file this application. As her claim has been successful, the tenant shall pay this hearing expense.

Summary of Decision

34. 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 tenant shall pay to the landlord the amount of \$20.00.

21 December 2021

Date

