

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0568-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:16 a.m. on 17-February-2022.
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.
4. The landlord provided two witnesses: [REDACTED], the Resident Manager, hereinafter referred to as “witness1” and [REDACTED], the tenant in the apartment next door to the respondent, hereinafter referred to as “witness2.”

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 (LL#01) with his application stating that they had served the tenant with notice of the hearing, by prepaid registered mail on 20-December-2021. 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 Vacant Possession of the rented premises.

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 decision are the following sections of the *Residential Tenancies Act, 2018, Section 10: Statutory Conditions, and Section 24: Notice where a tenant contravenes peaceful enjoyment and reasonable privacy.*

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

9. The landlord did not submit the rental agreement; he therefore gave testimony to the terms and conditions of the agreement. The landlord said that the tenant moved in on or about 01-March-2021. The tenant signed a one year lease from 01-March-2021 until 28-February-2022. The rental period is from the first to the last day of each month. Rent is \$845.00 a month, which is due on the 1st day of each month, the landlord currently has a promotion and the tenant is paying \$704.00 a month. The tenant paid a security deposit of \$314.00 it was paid in November 2021.
10. The landlord said that there have been ongoing issues with the tenant since he took occupancy of his apartment. He said that the tenant has brought a lot of unsavory characters around the apartment building and that these interactions have created issues with the tenant and generated complaints from other tenants living in the apartment building.
11. The landlord submitted the termination notice (LL#02) it is on a Landlord's notice to terminate early – cause form, for interference with peaceful enjoyment and reasonable privacy. It is signed on 26-October-2021 with a termination date of 02-November-2021. He said that Witness1 delivered the notice on the day it was signed.
12. Witness1 said that she is the Resident Manager of the apartment building; she started working there on 05-August-2021. She confirmed that she served the tenant with his termination notice as stated by the landlord. She went on to say from the start of her employment there were issues with the tenant. She has received a lot of complaints from other tenants.
13. Witness1 said that the tenant himself, is very easy to speak with and she feels that they have built a rapport. She had noticed that a large SUV was pulling into the parking lot and that the tenant would go out and sit in the vehicle and then return to the building carrying things. She decided to confront the tenant about what was happening? She said she asked, is he selling drugs? She said that, he said he was. She told him, at that time, that this cannot happen around the building.

14. Witness1 also said that they had had issues with the tenant's visitors coming into the building and taking complimentary items left out as a promotion for the tenants. She said that they let this go, but when his guests started taking pictures off the walls she spoke to the tenant and told him he had 24 hours to get the items back, or they would be reporting it stolen.
15. Witness1 explained that the issues with this tenant are centered around the selling of drugs. On the day the termination notice was served, the tenant's girlfriend called witness1 and told her "he has a gun, call the cops." Witness1 said that there was a guy, called [REDACTED] with a plastic bag, who according to the tenant's girlfriend had a gun in the bag and was threatening them for drugs. Witness1 said that the tenant and his girlfriend didn't want to call the police themselves because they didn't want to be seen as rats. Witness1 also said, when she asked the girlfriend how they knew there was a gun in the bag, the girlfriend had told her that they were holding on to the gun for a prior purchase and had just given it back to [REDACTED] the girlfriend then said, he left with the gun, but then returned and was using it to demand drugs. Witness1 said that when the police came the tenant and his girlfriend wouldn't give a statement to the police.
16. After this incident the tenant and the girlfriend questioned what the apartment management were going to do to protect them from this incident happening again.
17. Witness1 said that she gave him the termination notice, on 26-October-2021. At that time he had people in his apartment so she asked him to come to her office. She said she discussed the issues with him and that he understood why they were terminating the rental agreement.
18. On 12-November-2021, the tenant and a friend, were threatening another tenant. They were both wearing a mask, the tenant had a Taser and the friend had a knife. They walked down the hallway in the apartment building and were yelling at the guy and pounding on his door. Witness1 had this on video and confronted the tenant and he told her that they were never going to hurt the guy and that they only wanted to scare him. She said that, she told him, he also frightened everyone else on the floor.
19. Witness2 lives in the apartment next to the tenant. She said that they live on the second floor and people throw rocks at the window to get the attention of the tenant. Because she lives next door, the rocks are also thrown at her window and have even come into her apartment when the window was open. She has called the police when the rocks came into her apartment. She believes that the tenant doesn't have a phone and that this is how people get his attention.
20. Witness2 said that last summer when the tenants from the apartment would be outside using the yard, many people would be concerned about what was happening. They all were concerned with the number of people who were coming and going all hours of the day and night. She said that they bang on his door throughout the night.
21. Witness2 said on one occasion someone started violently banging on her door and threatening to kill her; she again called the police.

22. Witness2 said she spoke with the tenant and he was easy to speak with, he apologized, however, nothing changed.

Analysis

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.

....

According to Residential Tenancies Policy 7-05 Peaceful Enjoyment, interference of peaceful enjoyment is defined as: "an ongoing disturbance or activity, outside of normal everyday living, cause by the landlord or the tenant". Peaceful enjoyment may include, but is not limited to the following: (i) excessive noise; (ii) aggressive or obnoxious behaviour; or (iii) threats and harassment.

24. The tenant's guests and his own behavior is dangerous and disruptive. Having illegal and frightening activity take place in an apartment building would impact all the tenants who live there as indicated by witness2 in paragraph 20.

25. The tenant has been spoken too by both the building management, as well as, tenant 2. They have tried to communicate with him about the impact of his dealing drugs on the property. Tenant2 has been threatened and has had rocks thrown threw her window. She has had to call the police for assistance. Witness1 has also spoken with the tenant and has also had to call the police. She has also indicated in paragraph 12 that she has received a lot of complaints from other tenants about the tenant and his guests.

26. The landlord acknowledged how difficult it is to find people to speak up when illegal activity occurs on the property. He said that it is his experience that people are afraid to speak for fear of reprisal.

27. According to witness1, in paragraph 17, the tenant understands that he is causing issues and is aware of why he is being evicted.

28. I find based on the testimony of the witnesses that the tenant is interfering with the peaceful enjoyment of other tenants in the building.

29. The landlord's claim for vacant possession succeeds.

Decision

30. The landlord's claim for an order for vacant possession of the rental premises succeeds.
31. The tenant is to vacate the property immediately.
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 reimbursed \$20.00

33. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#03) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant; he shall therefore retain \$20.00 from the tenant's security deposit.

Summary of Decision

34. The landlord's claim for an order for vacant possession of the rental premises succeeds.
35. The tenant is to vacate the property immediately.
36. 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
37. The landlord shall retain the cost of hearing expenses, \$20.00 from the tenant's security deposit.

February 21, 2022

Date

