

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0333-05

Jacqueline Williams  
Adjudicator

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### Introduction

1. Hearing was called at 9:36 a.m. on September 9, 2021.
2. The applicants, [REDACTED] hereinafter referred to as "tenant1" and "tenant2" respectively, attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.

### Issues before the Tribunal

4. The tenants are questioning the validity of the termination notice for violation of peaceful enjoyment.

### Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case are sections 10 and 24 of the *Residential Tenancies Act, 2018* and rule 29 of the Rules of the Supreme Court, 1986.

### Preliminary Matters

7. The landlord has called a witness, [REDACTED] who is the downstairs tenant.
8. The landlord provided the board with the phone number and the witness was brought into the hearing when required to testify.

## Issue: Validity of Vacant Possession Due to Violation of Peaceful Enjoyment

### Relevant Submissions

9. The parties entered into a written rental agreement for the term of May 01, 2021 – April 30, 2022 (■#03) on March 11, 2021. The rent is \$1,250.00 due on the first of every month. There was a security deposit paid in the amount of \$935.00 on March 11, 2021. The tenants took possession on May 01, 2021. The agreement was signed on March 11, 2021.
10. The landlord submitted a copy of the termination notice (■#01) which he indicated was posted on the tenant's door and provided a picture ■#02 as well as an email sent on the date signed: July 19, 2021.
11. The termination notice was issued under section 24 of the *Residential Tenancies Act, 2018* (notice where tenant contravenes peaceful enjoyment and reasonable privacy) with an effective termination date of July 25, 2021. The tenant confirmed that he received the notice as stated.

### Tenant's Position

12. Tenant1 doesn't believe that they are in violation of peaceful enjoyment.
13. Tenant2 has been suffering medical issues which had caused the noise in question. They both stated on July 18<sup>th</sup> they were moving around because she was having a medical emergency. She was admitted to hospital, tenant1 submitted medical documentation indicating date of treatment (■#06) and schedule for surgery.
14. Tenant1 said that if the complaint is loud banging, this could be caused by a loose floorboard, tenant1 submitted picture of separated floor boards ■#07 that slides and bangs when they walk in the upstairs hallway.
15. Tenant1 provided a text message ■#04) where the landlord said that they flushed the toilet 15 times between 11 – 2. Tenant1 sees toilet flushing as a human right and that his partner was not well and this is why it was done so frequently.
16. Tenant1 also stated that the landlord is requiring them to have no noise between 11 – 8 and that they had not signed anything agreeing to this and he believes that this is unreasonable.
17. Tenant1 also feels threatened by the landlord. The landlord had made statements in his emails stating "it isn't a debate," "they will be leaving," and he "will change the locks."

18. Tenant1 was concerned that the landlord was going to change the locks and felt he couldn't go to the hospital with his partner because the locks might be changed while he's gone.

#### Landlord's Position

19. The landlord confirmed that the laminate flooring is still in need of repair, it was recently replaced, but requires more work. He doesn't agree that the sliding of the flooring is the banging noise that has been heard. With the tenant currently being hostile towards him, he doesn't wish to ask a contractor to enter the house at this time to complete this repair.
20. On July 1, 2021 he had a complaint from the downstairs tenant that there had been excessive noise the previous evening, as well as, noise that had been ongoing since the tenants moved in.
21. After receiving the complaint the landlord spoke with the tenant1. The landlord felt that tenant1 did not seem to be aware of the expectations of living in an apartment unit with other tenants and the responsibility of having a quiet environment.
22. He followed up the conversation by sending an email █#05) to the tenants. In the email the landlord listed the following sources of noise after the hours of 11:00 pm: stomping feet, slamming cupboards, loud music, loud TV, operating dishwasher, clothes dryer and clothes washer, and running, yelling, jumping.
23. On July 19, 2021 the landlord received another complaint of significant noise from the downstairs tenant. He complained that there was general unrest the night before; there was yelling, slamming doors and excessive toilet flushing. The downstairs tenant was very distraught and asking the landlord to help him with this situation.
24. The downstairs tenant had a specialist appointment the next morning and was unable to sleep.
25. At this time the landlord assured the downstairs tenant that he would handle the situation. He then issued the notice of early termination for violation of peaceful enjoyment. █#01).
26. Tenant1 responded to the notice with a text (█#04). He said that "they haven't been making noise since your last message with us. You are required to have proof".
27. Later the landlord found out that tenant1 apologized to the downstairs tenant for the noise. The landlord also became aware of the tenant2's medical issues after the notice was issued.
28. The landlord feels that tenant1 was very untrustworthy in this situation. Tenant1 told the landlord that there was no noise and then, afterwards, apologized to the

other tenant for the noise. Further to this tenant1 eventually disclosed to the landlord that the noise, which he previously denied, was due to tenant2's medical emergency.

### Witness

29. The witness is the tenant in the downstairs apartment.
30. He testified that he hadn't had any issue with the previous upstairs tenants.
31. He stated that there had been late night noise ever since the current tenants moved in. The noise on the evenings of June 30 and July 18<sup>th</sup> were particularly excessive.
32. The witness did state that the tenant1 apologized for the noise on the night of July 18<sup>th</sup>. He explained that tenant2 was having a medical emergency.
33. The noise is not only toilet flushing but has also been arguing and yelling. On the night of July 18<sup>th</sup> he could hear tenant2 saying "put that down, that's my mother's". This led him to believe that tenant1 was flushing tenant2's belongings down the toilet and he was concerned about what was happening.
34. The witness stated that the noise is ongoing from when the apartment was rented to these tenants and that the noise continues still. The noise is more than toilet flushing, it is yelling, TV, stomping and arguing.

### **Analysis**

35. Statutory condition 7.(a), set out in section 10.(1) of the *Residential Tenancies Act, 2018* states:

- i. **Statutory conditions**
  - ii. **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:**
  - iii. ...
  - iv. **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.*

- v. ....

36. Additionally, pursuant to Policy 7-05 Peaceful Enjoyment, interference of peaceful enjoyment is defined as: "an ongoing disturbance or activity, outside of normal everyday living, caused by the landlord or the tenant". The policy further identified that peaceful enjoyment may include, but is not limited to the following: (i) excessive noise; (ii) aggressive or obnoxious behaviour; and (iii) threats and harassment.

37. As stated in paragraph 13, tenant2 was having a medical issue on the night of July 18, 2021. Her testimony is that her condition demands that when she requires the use of the bathroom she must go immediately.

38. Although the constant flushing is an issue for the downstairs tenant, this might not be unreasonable for tenant2 and not a violation of the policy as stated in paragraph 37.

39. The flushing of the toilet, however, is only one of a variety of noise complaints. The nights of June 30<sup>th</sup> and July 18<sup>th</sup> may very well be an anomaly caused by a medical issue. However, the behaviours of the tenants as identified by the landlord in paragraphs 22, 23 and corroborated by landlord's witness in paragraphs 34 and 35: stomping feet, slamming cupboards, loud music, loud TV, operating dishwasher, clothes dryer and clothes washer, running, yelling and jumping noises that occur throughout the night, however, are not tied to the medical issue. These late night noises are disrupting the downstairs tenant throughout the night and preventing him from sleeping, I find that this is in violation of the peaceful enjoyment clause in the *Act*.

40. It is clear from the evidence submitted i.e. the texts (████#04) and emails (████#05) that the landlord attempted to mitigate this situation earlier this summer by explaining to the tenant1 the expectations of renting in a household with more than one renter. This is further validated by the testimony of both tenant1, the witness and the landlord stating that there had been conversations about the noise level. As well as, the expectations that the landlord explained to the tenant that they are to be relatively quiet during the night and so they don't interfere with the peaceful enjoyment of the downstairs tenant.

41. I find that the tenant is in violation of the peaceful enjoyment and reasonable privacy condition outlined in the *Act* and that the downstairs tenant is being negatively impacted by the actions of the tenants in the upstairs apartment.

42. Finally, according to section 24 of this *Act*:

- i. Notice where tenant contravenes peaceful enjoyment and reasonable privacy*
- ii. 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.*
  - 1. (2) In addition to the requirements under section 34, a notice under this section shall*

(b) be signed by the landlord;

(c) 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.

43. The termination notice provided by the landlord (█#01) adheres to the conditions outlined in the act and is a valid termination notice.

44. The tenants should have vacated the apartment on July 25, 2021.

### **Decision**

45. In answer to the question of validity of the termination notice, I find that the termination notice is valid.

### **Issue 2: Hearing Expenses**

46. The tenant incurred the cost of \$20.00 to file this application and provided the receipt for same.

47. As the claim is unsuccessful the tenant is responsible for these expenses.

### **Summary of Decision**

48. The termination notice dated July 25, 2021 is a valid termination notice.

September 15, 2021

Date