

Residential Tenancies Tribunal

Application 2022-No.47-NL

Decision 22-0047-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:15 a.m. on 11-April-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 called a witness, [REDACTED], who is a tenant in another apartment in the same building, she will hereinafter be referred to as “the witness.”

Preliminary Matters

5. The landlord in this file is the property management company for the homeowner.
6. 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 with their application stating that they had served the tenant with notice of the hearing, by having a process server deliver the notice to the tenant. The process server served the notice personally to the tenant at the rental unit, on 11-February-2022. 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

7. The landlord is seeking
 - Vacant possession of the rental premises.
 - Hearing expenses reimbursed

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy and Section 35: Service of documents.

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions:

10. The landlord said that they have a written rental agreement (LL#02) with the tenant. The tenant took occupancy on 01-October-2020 and he signed a term agreement until 30-September-2021; they are currently in a monthly agreement. The tenant pays \$700.00 a month for rent. The rental period is from the first day of the month to the last; rent is due the 1st day of each month. The tenant paid a security deposit of \$525.00 on 13-October-2020. The landlord is still in possession of that deposit.
11. The landlord said that the tenant had been living there for about a year with no issues. In the fall of 2021 she said that their issues with the tenant began. At that time, the landlord said that they started to receive complaints about criminal activity at the house. The house is rented by another tenant on the top floor and a convenience store on the main floor. The tenant lives in the 2nd floor apartment.
12. The landlord said that the door to the hallway, leading to the apartment belonging to the tenant and the 3rd floor apartment belonging to the witness, had been kicked in numerous times. The police had also been called to the house on a number of occasions.
13. The landlord said that they tried to speak to the tenant about the issues and wanted to mediate the issues between the parties, but the tenant did not want to participate.
14. The landlord said that the convenience store hired a security guard because of the impact the activity was having on their business.
15. In addition to the suspected illegal activity, there were issues of damages where the door had been kicked in so frequently, that the door frame was damaged, there was a window broken out from the inside of the tenant's apartment and glass was on the ground outside, as well as, there was garbage and recycling piling up. (pictures included LL#05) The landlord said that the tenant is responsible to bring out the garbage, according to the rental agreement (LL#02). She said he did take care of the disposal of his garbage previously but had stopped.
16. The issue with the garbage became apparent to the City and the landlord received a letter (LL#05) telling them that they would be fined if the garbage wasn't disposed of; the homeowner was concerned about rodents and subsequently paid an individual to start taking away the garbage.

17. The landlord provided an email (LL#04) where she informs the tenant's social worker that they are having issues and that they have given him a termination notice. The social worker responds with her acknowledging the issue and providing an emergency shelter number for the tenant to call if he finds himself without housing.
18. The landlord said that they hired [REDACTED] to serve the tenant with a termination notice (LL#03). The notice was in a letter dated 13-January-2022. It cited Section 24 as the reason for termination of the rental agreement, the termination date is 19-January-2022. [REDACTED] posted the notice on the tenant's door.
19. The landlord presented a witness from the upstairs apartment to explain how the tenant's behavior is impacting her life.
20. The witness said that she has lived in her apartment for the past 4 years. She believes that the tenant is a drug dealer. She says she has witnessed people coming in to the house with money and leaving with drugs. She has also seen and heard him negotiating a price with his supplier.
21. She said that the tenant has people coming and going all hours of the day and night. She said she feels very unsafe in her apartment. She is unable to sleep and she can no longer have friends come over to visit because she will not bring people into this unsafe environment.
22. The witness said that when the security guard started at the store, he told her he was there to watch the store, as well as, her apartment. She said that, he told her, there are more people coming and going from the apartment entrance, then from the store, during his shift.
23. The witness said that people come to her apartment all hours of the day and night, looking for the tenant and she has to tell them that he doesn't live there. She said she also has to walk past these people, while they are in the hallway, to come and go from the apartment.
24. The witness said that the lights have been broken out in the common hallway and that she believes that the tenant prefers to keep the area dark.
25. The witness said that there are often fights and there has been illegal activity on the premises. The police attend the house frequently. She said that she will call the tenant when there are fights and ask what is going on. She has on occasion called the police herself, when there is the sound of fighting and furniture being thrown in the apartment.
26. The witness said she never asks about or acknowledges the selling of drugs. She said she is a single female living in the same house and that she believes it would be unsafe to confront about the selling of drugs.
27. The witness said that there is constant activity and noise, she feels unsafe and she is unable to sleep. She is frustrated that this process has taken so long.

Analysis

28. 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.

....

29. 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.

30. I agree that the situation described by both the landlord and the witness is outside of normal everyday living. The constant traffic, police presence and the concerns of illegal drug activity is impacting the witness and her right to peaceful enjoyment of her premises, as there is an unsafe environment created by the tenant’s activities.

31. Section 24 of the Residential Tenancies Act, 2018: states

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.*

32. The landlord’s notice, as described in paragraph 18, was served to the tenant by posting it on his door on 13-January-2022 with a termination date of 19-January-2022. The notice meets the requirements of the *Act* and was served in accordance with the *Act*.

Decision

33. I find that the tenant did interfere with the peaceful enjoyment of the other tenant in the building; the notice served by the landlord is a valid notice.

34. The tenant should have vacated the apartment on the 19-January-2022.

Issue 2: Hearing expenses reimbursed \$26.04

35. The landlord submitted the receipt for \$26.04 for the cost of the hearing (LL#06) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant. The landlord shall retain this expense from the tenant's security deposit.

Summary of Decision

36. The landlord's claim for an order of possession of the rental premises succeeds.
37. The tenant should have vacated the property on 14-November-2021. The tenant is to 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
39. The landlord shall retain \$26.04 from the tenant's security deposit as reimbursement of the hearing expense.

April 18, 2022

Date

[Redacted]
Jacqueline Williams, Adjudicator
Residential Tenancies Office