

Residential Tenancies Tribunal

Applications: 2022 No. 0248 NL

Decision 22-0248-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:22AM on 2 June 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as the “landlord”, participated in the hearing.
3. The respondent’s wife, [REDACTED], hereinafter referred to as “tenant1” participated in the hearing.
4. The respondent, [REDACTED], hereinafter referred to as “tenant2” was present during the hearing, but did not participate in English due to limited English abilities.
5. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served of the claim against him.
6. The details of the claim were presented as a month-to-month agreement that started in August/September 2020. Monthly rent was originally set at \$850.00 a month and later reduced to \$825.00 a month. A security deposit in the amount of \$637.00 was collected (when rent was \$850.00 a month) and is being held by the landlord.
7. In a proceeding under the *Residential Tenancies Act*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. The standard of proof, in these proceedings, is referred to as the balance of probabilities which means the applicants have to establish that their account of events is more likely than not to have happened.

Issues before the Tribunal

8. The landlord is seeking the following:
 - An order for vacant possession.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
10. Also relevant and considered in this case are sections 10 and 24 of the *Act* and Policy 07-005 Interference with Peaceful Enjoyment and Reasonable Privacy.

Preliminary Matters

11. Tenant1 and tenant 2 speak Mandarin as their first language.
12. Tenant1 participated actively in the hearing. I conducted the hearing using the typical protocols, but I also paused more frequently than usual to check in with tenant1 and ensure that she was following along and understanding the proceedings.
13. The rental unit occupied by tenant1 and tenant2 and their almost five (5) year-old son is a mini-home duplex. The full mini-home is 64 feet long and 16 feet wide. The rental units are one bedroom units that are joined at the middle in the kitchen area. Each unit provides approximately 500 square feet of living space on their respective sides of the mini-home.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

14. The rental premises is located at [REDACTED]. Tenant1 and tenant2 reside in unit A and the witness and her family resides in unit B.
15. The landlord testified that she agreed to rent to tenant1 and tenant2 knowing that they had a young boy. She also testified to her awareness that they would be sharing the mini-home duplex with the witness, her fiancé and their young boy of a similar age.
16. The landlord testified that the rental premises is nearly 20 years old and that she has been renting it as a duplex for 15 years. The landlord testified that the rental premises is an originally built duplex straight from the manufacturer and that it is duly approved as a rental unit by the municipality.

17. The landlord testified that she has only had to evict one other tenant, and that this was for reasons of domestic abuse that involved the regular breaking of oak furniture. The landlord also spoke of a specific prior instance, when both sides of the duplex were vacant and a possible tenant was concerned about noise, so she entered the other unit to demonstrate how well the rental premises is able to contain the noise within respective units of the duplex.
18. The landlord testified that she issued a termination notice to tenant2 on 07 March 2022 (L#2). This notice was issued under section 24 of the *Act*, for interference with peaceful enjoyment and reasonable privacy, and identified a stated move out date of 26 March 2022. The landlord testified that she served the notice electronically, by texting it to tenant2 and provided a grid document of text messages between herself and tenant2 as proof of service (L#3).
19. The landlord testified that she sought guidance from the Mt. Pearl Landlord Tenant office to be sure of her compliance with the *Act*. Specific to why she issued the notice under Section 24 of the *Act*, the landlord testified that she has received complaints about tenant1 and tenant2 and their young son since they moved into their rental unit.
20. The landlord testified that she has been informed by Newfoundland Power that tenant1 and tenant2 have closed their account and that the utility bill for the rental unit is now in her name. She also testified that tenant1 and tenant2 have not paid rent for the month of June 2022. Tenant1 indicated that she and her family are attempting to move, but have experienced a delay with a new possible rental unit.
21. Regarding specific details on complaints received and cited as the reasons for the termination notice, the landlord referred to the evidence she submitted (see L#4 Exhibit List) which included:
 - 5 Pages of partial screenshots of texts with tenant2;
 - 4 Pages of partial screenshots of texts with the female tenant in the adjoining unit; and
 - 3 Witness affidavit documents from the female tenant in the adjoining unit.

TEXTS WITH TENANT2

Landlord's Position

22. The landlord testified that she believed she was communicating effectively with tenant2 because he would respond to all of the texts that she sent. The following information was identified from a review of these texts:
 - Tenant2 indicated that he would vacate when he found a new rental;

- Noise complaints occur primarily in the evening when tenant2 is not always home;
- The landlord repeatedly texted “please keep the noise down” on multiple occasions since the termination notice was issued;
- The landlord texted tenant2 a handful of times prior to issuing the termination notice (between September 2021 and March 2022) to “keep noise and banging down”.
- There was extensive back and forth between tenant2 and the landlord on 17 December 2020 regarding “noise” – I note the prompt responses from tenant2 to each text from the landlord (L#5).

Tenant's Position

23. Tenant1 testified that she received documents from the landlord regarding the hearing.

TEXTS WITH WITNESS (Female tenant in Unit B)

Landlord's Position

24. The following information was identified from a review of texts sent between the female tenant in unit B of the mini-home duplex and the landlord:

- There were a handful of texts referring to “banging” after the termination notice was issued (L#6).
- There were a handful of texts from prior to the termination notice being issued (between September 2021 and March 2022), where complaints of the child running, banging and rattling dishes were identified.
- One particular text read (L#7): “The kid next door is running laps again. I don’t know why they are so quiet all day but as soon as 7pm comes they make so much noise”.
- A separate series of texts (L#8) depict concerns with the “vibrations” through the floor due to tenant1 and tenant2’s child running in their rental unit as well as concerns with the child playing with sticks and rocks in the yard of the rental unit. One particular text reads: “nothing like sleeping all day and up all night running laps in the place” to which the landlord responds “hang in there we’re going to deal with it”.

25. The landlord testified that she wants the issue to be dealt with and resolved with “no hard feelings”. She testified that she is also impacted by the noise complaints because the frequent texts she receives regarding noise will often wake her up.

Tenants' Position

26. Tenant1 questioned one particular text from the witness, where she had written regarding tenant1's child: "He also has been on our neighbours property again taking sticks off her trees and banging on the house. His mom just stares at him don't say anything."
27. Tenant1 testified that the tree is growing through the fence, and any sticks used by her son are on their property. She also testified to say that it was incorrect that she "just stares". Tenant1 testified that she is at home with her son during the day, and that they play outside when the weather is nice, but that when it is not nice, they are inside.

WITNESS STATEMENTS AND AFFIDAVIT

Landlord's Position

28. The landlord referred to the three witness affidavits submitted by the female tenant in unit B of the mini-home duplex. A review of these affidavits depicts the following information:
 - The witness contacted the landlord regarding noise on:
 - i. 4 October 2020,
 - ii. 6 December 2020,
 - iii. 4 January 2021,
 - iv. 28 August 2021 (L#9),
 - v. 5 November 2021,
 - vi. 20 December 2021,
 - vii. 31 January 2022,
 - viii. 5 March 2022,
 - ix. 6 March 2022(L#10) and
 - x. a handful of other times after 7 March 2022
 - The witness reported banging, stomping, running and "vibrations" that would make dishes shake in her unit.
 - There were two occasions that noises from the rental unit occupied by tenant1 and tenant2 and their child woke up her son.
29. The landlord called [REDACTED] as a witness.
30. [REDACTED] has been living in unit B of the mini-home duplex with her fiancé for 7 years. They also have a five year old boy. The witness testified that she has not complained about any of the other tenants. [REDACTED] testified that she is a stay at home mom, that her fiancé works 10am -7pm five days a week and that her son sleeps 7:30PM-6am each day. [REDACTED] testified that she does not talk to her neighbours much because of the "language barrier".

31. Regarding her complaints to the landlord, the [REDACTED] testified that she hears noise every second or third night from tenant1 and tenant2 and that she can hear these noises in her bedroom (the far end of the mini-home duplex). [REDACTED] testified that her fiancé is a quiet man who tries to ignore the noise of tenant1 and tenant2. She also testified that her son sleeps in the bedroom with her and her fiancé and that her primary concern is when noise wakes up her son.

Tenant's Position

32. Tenant1 testified that she does not interact regularly with the female tenant, her spouse or their five year old son in unit B of the mini-home duplex. She stated that she often hears noise from the other unit, but that she recognizes they live in a "trailer" and that their units are only separated by a "normal wall".

33. Tenant1 also testified to how the "trailer" is not on a foundation, and that sound and vibrations travel across the floor because there is just "empty space: beneath the floor. The landlord indicated that the floor of the min-home duplex is a vinyl fibre floor.

34. Tenant1 testified to how her son is home with her during the day, and that he loves sports. She reiterated how, when the weather is nice, they play outside. Tenant1 also indicated sometimes they "dance". Tenant1 testified that her son sleeps in her room with her and tenant2.

35. Tenant1 testified that her husband, tenant2, works 6 days a week from 10:30am through to 9-10:30PM in the evening. She indicated that Thursdays (the day of the hearing) are his day off. Tenant1 testified that she has a "happy family".

Analysis

36. To issue a termination notice under section 24 of the Act, Interference with Peaceful Enjoyment and Reasonable Privacy, a landlord must be able to establish, on the balance of probabilities, that the tenant unreasonably interfered 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.

37. According to Residential Tenancies Policy 07-005, Interference with Peaceful Enjoyment and Reasonable Privacy, interference is defined as an ongoing unreasonable disturbance or activity, outside of normal everyday living, caused by the landlord or the tenant or someone permitted on the premises by the landlord or the tenant. This includes any unreasonable disturbance that interferes with right of the landlord to maintain and manage the rental property.

38. The policy further identifies that unreasonable disturbances interfering with peaceful enjoyment and reasonable privacy may include, but are not limited to the following:

- (i) excessive noise;
- (ii) aggressive or obnoxious behaviour; or
- (iii) threats and harassment.

39. Relevant to the question of whether the noise was as “ongoing” or “excessive” I note that the witness identified 9 complaints in the 18 or so months that tenant1 and tenant2 resided in their rental unit with their young son. I do not consider this significant. Furthermore, only one text from the witness suggested any sort of duration, when she wrote in December 2020 that the son of tenant1 and tenant2 sleeps all day and runs laps all night (L#8). However, no specifics on the frequency of this happening, were provided. The witness also noted on this same text chain, that Unit A (the unit occupied by tenant1 and tenant2 and their young son) is “quiet all day” which is notable, considering that the 500 square foot space is occupied day after day by a mom (tenant1) and her young boy.

40. Relevant to the question of whether the noise identified by the witness is “unreasonable” and “outside of normal everyday living”, I was not convinced that tenant1, tenant2 or their nearly five year old son were conducting themselves unreasonably. Rather, I found tenant1 to be extremely reasonable in her testimony when she spoke of how she regularly hears the witness and her family in Unit B of the mini-home duplex but that she does not complain because she recognizes that they live next door in a small space that does not have a foundation and is separated only by a common wall.

41. I also found tenant2 to be very reasonable in his seemingly prompt response to all texts sent to him from the landlord. This was despite, as noted in paragraph 23, the landlord texting only “keep the noise down”, a rather vague request that could mean anything really. Furthermore, where tenant1 and her son were said to be quiet throughout the day and only make noise in the evening, I note that tenant2 returns home from work at 9-10:30PM each evening. Tenants are expected to make some noise as they come and go from their rental premises.

42. Furthermore, I note that a significant number of the noise complaints flagged by the landlord and witness relate to supposed incidents that occurred after the 7 March 2022 termination notice was issued. This information is not relevant to establishing on the balance of probabilities, whether or not the landlord was justified in issuing a termination notice for interference with peaceful enjoyment and reasonable privacy on 7 March 2022.

43. Taken together, I find that the termination notice issued to tenant1 and tenant2 on 7 March 2022 fails the first test of validity put before it as the landlord failed to establish on the balance of probabilities, that at the time the notice was issued, tenant1 and tenant2 had “outside of everyday living” unreasonably disturbed the witness or the landlord.

44. Because the notice was not issued for a valid reason, it is not a valid notice.

Issue 2: Hearing Expenses
Relevant Submissions

45. The landlord submitted a claim for hearing expenses for the cost of the application (L#11).
46. Because her claim was not successful, the landlord is not entitled to hearing expenses from the tenant.

Summary of Decision

47. The landlord is not entitled to the order for vacant possession.

06 June 2022

Date


Jaclyn Casler
Residential Tenancies Board