

Residential Tenancies Tribunal

Application 2022-No.320-NL

Decision 22-0320-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:13 a.m. on 19-May-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1 and tenant2” attended by teleconference.
4. Tenant2 provided a witness, [REDACTED], hereinafter referred to as “the witness,” he attended by teleconference.

Preliminary Matters

5. The landlord also submit sworn written testimony (LL#05) from the upstairs tenant, [REDACTED].
6. The landlord said he provided notice to both tenants electronically on 04-May-2022, both tenants confirmed service.

Issues before the Tribunal

7. The landlord is seeking Vacant possession of the rental premises.

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 10: Statutory conditions, Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy, as well as Residential Tenancies Policy 07: Peaceful enjoyment.

Issue 1: Vacant Possession of the Rental Premises

Landlord's Position

10. The landlord said that he entered into a verbal rental agreement with both tenants; he then provided an unsigned written agreement (LL#01), outlining the terms for tenant2's financial support. Tenant1 was already living at the apartment and his roommate moved. Tenant1 was an acquaintance of tenant2 and she moved into the apartment on 01-April-2022. The agreement is with both tenants and begins on 01-April-2022. The tenants each pay half of \$900.00 on the 1st day of each month, utilities are not included. The security deposit is \$450.00 and this was also split equally. The landlord is still in possession of the deposit.
11. The landlord said that on 02-April-2022 tenant2 contacted him to say that tenant1 had moved out of the apartment. She said she had invited a few people over, because she had just finished a course. She said he was upset and left.
12. The landlord said he contacted tenant1 who was incredibly upset and told him that tenant2 had people over until early in the morning, they were drinking and trying to get into his room. He said when he went to the bathroom, they also tried to get in there. He told him that he got up in the morning and took what he could and left the apartment.
13. The landlord said tenant1 has only returned to the apartment once to get his furniture and belongings. Tenant1 told him that he wants to give notice; he is still paying rent.
14. The landlord said that he gave tenant2 a termination notice for interference with peaceful enjoyment on 04-April-2022. He said he checked in with the upstairs tenants and they said that everything was quiet, since the first night, so he told tenant2 that they could start fresh and he withdrew the notice.
15. On 15-April-2022 the landlord received a number of messages from the upstairs tenant who provided written sworn testimony (LL#05). The upstairs tenant said that there was a lot of noise, as well as, people and dogs coming and going downstairs at 3:30 a.m. A number of people were up banging on his door. He called the police and they left around 4:15 a.m. He said after the police left the noise continued.
16. The upstairs tenant contacted the landlord again on 23-April-2022. Police had come to the apartment and said that the downstairs tenant had accused him of looking through her windows and taking pictures. He told the landlord, that he explained to the police, that he was in the yard with the dog, but was not looking into the apartment at the tenant.
17. The landlord said he lives out of province, he has nothing personal against tenant2, but ever since she has moved in she has disrupted the lives of her roommate and upstairs tenants. He said she creates drama and chaos. He wants to terminate the lease agreement with both tenants and gain possession of the apartment.
18. The landlord submitted a termination notice (LL#03). It is signed and dated for 20-April-2022 with a termination date of 30-April-2022. This copy is unsigned; he said he gave the tenant a signed copy electronically on 20-April-2022.

Tenant1's Position

19. Tenant1 found testifying traumatic. He said that he had explained to tenant2 he couldn't be around alcohol and he didn't want people in the apartment. He said that she convinced him to have the people over. He said that the people were trying to get in his bedroom and also tried to get in the bathroom when he was in there. He said that he was so upset he moved the next morning.
20. Tenant1 said he was coming to the apartment with a friend and his father to collect his possessions. He requested that tenant2 stay in her room until they left. When they arrived at the apartment, tenant2 was in the kitchen. He said he was so distraught that he collapsed in the driveway.
21. Tenant1 agrees to end his rental agreement.

Tenant2's Position

22. Tenant2 acknowledges that her first night in the apartment she had people over and they were drinking. She said she had just passed her course and was celebrating. She said that no one was trying to get in tenant1's room.
23. Tenant2 said that the next day she apologized to tenant1 and didn't want him to move.
24. Tenant2 said that on 15-April-2022 that she and her witness had a few drinks and were asleep when a friend arrived around 3:00 a.m. The friend had a dog with him. She also had her dog there will the person who is caring for him was out of town. She said her friend had said that he heard on the police scanner that there was a noise complaint that listed her apartment as the address. She said that the police showed up and requested her friend go home. Her friend left and she and the witness went back to bed.
25. Tenant2's witness confirmed the details in paragraph 24.
26. Tenant2 said that she had a friend over on 23-April-2022 and it was a nice day; they had a few drinks and her friend told her to look in the window, that there was a guy looking in at them and taking pictures. Tenant2 said she called the police.
27. Tenant2 said that after that day she spoke to the upstairs tenant and apologized and they both agreed to start over. She acknowledges that she did have a few drinks and might not have had her glasses on.
28. Tenant2 confirms that she received the termination notice as stated and that it is signed.

Analysis

29. 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.

....

30. 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.
31. Although tenant2 is often apologetic about the disruption, the issues continue to exist. The excessive noise and late night activity is an issue for all other tenants in the home.
32. The tenant is interfering with the peaceful enjoyment and reasonable privacy of the others in the home.
33. 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.

(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.

34. The termination notice, with a termination date of 30-April-2022, meets the requirements of the Act.

Decision

35. The landlord's claim for a vacant possession order is successful.

Summary of Decision


36. The landlord's claim for an order for vacant possession of the rental premises succeeds.

The tenant should have vacated the property on 30-April-2022. The tenant is to vacate the property immediately.

The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sherriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession

May 24, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office