

Residential Tenancies Tribunal

Application 2022-No.364-NL

Decision 22-0364-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 30-May-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” did not attend.

Preliminary Matters

4. 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 he had served the tenant with notice of the hearing, in person, on 18-May-2022. As the tenant was properly served, and as any further delay in the proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.

Issues before the Tribunal

5. The landlord is seeking, vacant possession of the rental premises.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

7. 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 tenant contravenes peaceful enjoyment and reasonable privacy.

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

8. The landlord submitted the rental agreement (LL#02) he has with the tenant. The tenant has a one year term lease from 01-November-2021 until 31-October-2022. The tenant pays \$860.00 a month (utilities are not included). The tenant's rental period is from the first day of the month until the last; rent is due in full on the first day of each month. The tenant paid a \$600.00 security deposit on 25-October-2021; the landlord is still in possession of the deposit.
9. The landlord said that an organization, Connections for Seniors, were assisting the tenant in finding housing. He was told that the tenant was an elderly gentleman who would be downsizing and moving to [REDACTED] to be close to family. He said that there were issues with the tenant from the start.
10. The landlord said that the tenant is renting the basement apartment of his home.
11. The landlord said that the tenant would, on a daily basis, set off the fire alarm. They spoke with the tenant and discovered that he has lost his sense of smell and that when he was cooking, if he burnt the food, he would not smell it and the fire alarm would alert him.
12. The landlord said that the tenant was always quick to respond to the alarm and that they accepted this issue.
13. The landlord said that the tenant is drinking to excess. That they frequently hear yelling, screaming and vomiting sound coming from the tenant's apartment. The tenant has people hanging around and that they have even passed out on top of his wife's car.
14. The tenant went to hospital for about 45 days in February/March. After he was released a man in his 30's started staying at the apartment around 14-April-2022.
15. Since the new person has been staying there the landlord said that every morning someone goes to the liquor store around 9:00 – 10:00 in the morning. He said he believes they then sleep until about 3:00 p.m. Around 7:00 p.m. the drinking starts and continues through the night and into the next morning.
16. The landlord said that there is arguing, screaming, furniture being tipped over, and people falling. He said that it is loud enough that it wakes them from their sleep and it wakes their 18 month old.
17. He said during the month of April the police have attended the apartment six times. He said three of the times they called the police to do a wellness check. He doesn't know who called the other three times.

18. The landlord said that when the police come there, they tell the landlord that there is nothing illegal happening, however there is misuse of prescription medication and a lot of alcohol use.
19. The landlord said that in addition to this, since the new person moved in, the fire alarm has not sounded. He said that he frequently smells burning in the downstairs laundry room. He is concerned that the tenant has disconnected the fire alarm and that they may start a fire.
20. The landlord said that the 30 something year old man who is staying downstairs has come to his home on two occasions. Both times he appeared to be intoxicated and angry, both times the landlord wasn't home and his wife answered the door. The 30 something year old man has told her to tell the landlord to come down he wants to talk. The landlord hasn't gone down, he said that the guy shouldn't even be staying there, he isn't on the lease.
21. The landlord said that this is really impacting his and his family's lives. Their sleep is being interrupted, there is frightening noises coming from the basement apartment and they have a small child who is being exposed to this. They are unable to use the backyard because of the people who are coming and going from the apartment. He wonders what will happen when the money for liquor runs out.
22. The landlord said that he served the tenant with a "landlord's notice to terminate early – cause" for interference with peaceful enjoyment (LL#03). The notice is signed and dated for 26-April-2022 with a termination date of 02-May-2022. He said he taped it to the tenant's door on 26-April-2022. The tenant is still living there.

Analysis

23. The landlord served the tenant with a Section 24 termination notice for interference with peaceful enjoyment and reasonable privacy. 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, caused 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. I accept the landlord's testimony of his ongoing record of his experiences with this tenant and I find that the tenant is interfering with the peaceful enjoyment of others in the house. The landlord's notice is dated for 26-April-2022 with a termination date of 02-May-2022 and was posted on the tenant's door on the day it was signed. 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.

25. The termination notice meets the requirements of the Act and is a valid notice; I find that the tenant should have moved on or before 02-May-2022.

Summary of Decision

26. The tenant shall vacate the premises immediately.

27. 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.

28. The landlord is granted an Order of Possession.

May 31, 2022

Date

— [Redacted]
Jacqueline Williams, Adjudicator
Residential Tenancies Office