

Residential Tenancies Tribunal

Application: 2022 No. 371NL

Decision 22-0371-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 28 July 2022 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED] [REDACTED], hereinafter referred to as "the landlord". The respondent, [REDACTED], hereinafter referred to as "the tenant", was not in attendance.

Issues before the Tribunal

3. The landlord is seeking an order for vacant possession of the rented premises.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 10 and 24 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and there was no telephone number available where she could be reached. 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. With his

application, the landlord submitted an affidavit stating that tenant had been served with the application, by registered mail, on 30 June 2022. The associated tracking history shows that that mail was not collected by the tenant and it was eventually returned to the landlord as unclaimed. Although the tenant did not receive the application, according to the section 42.6 of the *Residential Tenancies Act, 2018*, it is considered served on the 5th day after mailing—05 July 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 her absence.

7. The landlord called the following witnesses:

- [REDACTED] ("[REDACTED]") – tenant in apartment C12
- [REDACTED] ("[REDACTED]") – tenant in apartment C31
- [REDACTED] ("[REDACTED]") – resident manager at residential complex

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

8. The landlord stated that he had entered into a rental agreement with the tenant on 05 December 2016. The agreed rent is set at \$700.00 per month and the landlord stated that the tenant had paid a security deposit of \$480.00.
9. The landlord stated that he, and his resident manager, had received numerous complaints from other residents at the complex about the behaviour of the tenant over the last several months. These complaints concern loud noises coming from the tenant's unit at all times of the day and night, fighting taking place in the tenant's apartment and in the common areas, and frequent visits to the complex by people suspected to be involved with illegal drugs.
10. The landlord's resident manager, [REDACTED] was called as a witness. He testified that the tenant has numerous visitors coming to her unit all through the day and night, and he complained that these visitors are oftentimes knocking on the windows to be allowed into the complex and once inside, they often knock on the doors of the other tenants. He also stated that the tenant has gotten into several fights with her guests and the police have had to be called to the complex on several occasions, and in 1 case, the tenant was arrested. [REDACTED] stated that he has received numerous complaints from the other residents at the complex about the behaviour of the tenant, and he claimed that they were "at their wits' end" and were anxious for her to move out of the complex.
11. [REDACTED], who also lives at the complex, was called as a witness. Despite living 2 floors above the tenant, [REDACTED] complained that the tenant and her guests are very noisy and he can often hear them banging on the windows and doors at the complex, at all hours of the morning, seeking to gain entry into the complex. He stated that on a couple of occasions he had asked the tenant's visitors to be quiet, but instead of complying with that request, he ended up in altercations with

them. █ stated that he suspected that the people who are coming and going from the tenant's unit are drug dealers, and he claimed that many people at the complex are scared and won't let their children play outside, or in the common areas.

12. Another resident at the complex, █, who lives across the hall from the tenant, was also called as a witness. She reiterated the reports provided by █ and █, and also testified that she had witnessed loud noises coming from the tenant's unit, that she had seen a fight break out between the tenant and one of her guests, and that another guest had been beating things up in the hallway. █ also suspected that there is illegal drug activity taking place in the tenant's unit. █ testified that she is afraid for her safety and because of the issues that have been taking place at the complex, she has been living with her boyfriend for the past 3 months.
13. Because of these issues, the landlord instructed his resident manager to issue the tenant a termination notice on 06 April 2022, and a copy of that notice was submitted with his application. That notice was issued under section 24 of the *Residential Tenancies Act, 2018*, and it had an effective termination date of 12 April 2022.
14. The landlord stated that the tenant has not vacated as required, and he is seeking an order for vacant possession of the rented premises.

Analysis

15. Statutory conditions 7, set out in section 10 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 -

(a) 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.

and according to section 24:

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.

16. I found the testimony of the landlord's resident manager, [REDACTED], as well as that of [REDACTED] and [REDACTED], to be believable and credible and based on their corroborated testimony, I find that the tenant has been allowing numerous people into the complex, that they have been noisy, and that they have been fighting in the common areas and causing disturbances.
17. That sort of behaviour is clearly unreasonable, especially given that the tenant resides in a residential complex in such close proximity to other tenants. Both [REDACTED] and [REDACTED] complained that a lot of the noise is occurring at night and that it is disturbing their quiet and peaceful enjoyment of their apartments, and I also accept [REDACTED]'s claim that she fears for her safety while at the complex.
18. As such, I am of the view that the landlord was in a position, on 06 April 2022, to issue the tenant a termination notice under this section of the Act.
19. As the notice meets all the requirements set out here, it is a valid notice.

Decision

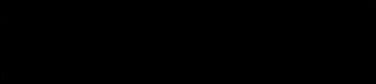
20. The landlord's claim for an order for vacant possession of the rented premises succeeds
21. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

Issue 2: Hearing Expenses

22. The landlord paid a fee of \$20.00 to file this application. As his claim has been successful, the landlord is authorized to retain \$20.00 of the security deposit to compensate for that expense.

03 August 2022

Date


John R. Cook
Residential Tenancies Tribunal