

Residential Tenancies Tribunal

Application 2022-No.378-NL

Decision 22-0378-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:11 a.m. on 01-June-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference
4. The landlord called three witnesses:
 - [REDACTED], hereinafter referred to as “witness1”
 - [REDACTED], hereinafter referred to as “witness2”
 - And [REDACTED], hereinafter referred to as “witness3”

Preliminary Matters

5. The landlord amended his application to remove security deposit applied to monies owed.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$600.00
 - Vacant possession of rental premises

Legislation and Policy

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

8. 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: Rent \$600.00

Landlord's Position

9. The landlord submitted the rental agreement (LL#01) he has with the tenant. The tenant has a written monthly agreement. He moved in on 05-August-2021 and he pays \$600.00 a month, utilities are included. The rental period is from the first day of the month to the last; rent is due in full on the first day. The tenant paid a \$300.00 security deposit on 05-August-2021; the landlord is still in possession of that deposit.
10. The landlord submitted a rent ledger (LL#02), which basically states that the tenant owes \$600.00 rent for May. The landlord testified that the tenant didn't pay his rent in full on 01-May-2022, the landlord however, received the following payments:
 - 04-May-2022 \$150.00
 - 11-May-2022 \$150.00
 - 17-May-2022 \$300.00
11. The landlord confirms that the payments came in late; May rent has been paid.
12. The landlord is seeking June rent, totaling \$600.00

Tenant's Position

13. The tenant agrees with the payments as stated by the landlord. The tenant said that he withheld his rent because he was served a termination notice and was trying to find a new place to live.

Analysis

14. Non-payment of rent is a violation of the rental agreement signed by both parties. The landlord confirmed that May rent has been paid in full. In respect to June's rent, the tenant has until the end of today to make this payment and he is currently not in arrears.

Decision

15. The landlord's claim for rent fails.

Issue 2: Vacant Possession of the Rental Premises

Landlord's Position

16. The landlord served the tenant with a "landlord's notice to terminate early – cause" termination notice (LL#08), for interference with peaceful enjoyment and reasonable privacy. The notice was signed on 06-May-2022 with a termination date of 12-May-2022. The landlord said that he served the tenant with this notice, in person, on 06-May-2022. The tenant is still living there.
17. The landlord said that he has received complaints from the other tenants in the home, as well as, the neighbors about the tenant. The landlord provided text messages of some of the complaints (LL#02, 03, 04, 05, & 06). The landlord said that there are 5 bedrooms in the house. The tenant rents a room and shares the common area with another tenant downstairs. Witness1 has a room upstairs and witness3 has a room on the back of the house.
18. The landlord said that there have been issues with the tenant smoking, and indicated that the rental agreement (LL#01) says there is no smoking. He said that there has been loud, all night parties, his guests have pounded on the windows of other tenant's rooms, and there has been suspected illegal activity. The landlord said he believes that someone passed the tenant money, through the window, and the tenant passed him back a packet that could be drugs.
19. The landlord said that one of the renter's moved out on 12-April-2022, he said this renter moved because he is afraid of the tenant.
20. The landlord said that on Easter Saturday there was an issue with the heat and when witness2 (the landlord's wife) went over to the house, there had been a switch moved. He said that the oil company said that someone had removed the cap on the tank and there was oil gone.
21. The landlord said that on 19-April-2022 he received an email, as per paragraph 17, with another tenant stating that he could hear a girl and guy fighting. Witness1 said that the tenant came in through his door, and broke a window. [REDACTED] was yelling to "let him in" and "that they were going to kill him." Witness1 then said that he could see a girl and guy running down the street with a t.v. from the downstairs apartment.
22. The landlord said there was another time when someone was wearing brass knuckles and they were beating up the tenant.
23. The landlord said that the tenant had a gasoline can open (LL#07 picture) inside the apartment on 18-May-2022. The landlord pointed out that the tenant has this open can in the house and he is smoking there. The landlord is concerned that the tenant may accidentally set a fire and put everyone in jeopardy. Witness3 said he believed that the tenant's last home burned down and witness3 said he has pets that he is concerned about. He is worried about this dangerous behavior.

24. On 22-May-2022 someone called Jiffy Cabs and they refused to attend because someone at the house had stiffed them a fare.
25. On 26-May-2022 witness2 was going to get the lawnmower and a female friend of the tenant started coming towards her and yelling things at her. Witness2 said she was afraid and hopped back in the van. Witness2 said she is also afraid of the tenant.
26. Also, on 26-May-2022 the landlord had issues with the tenant putting his laundry on and leaving. The drain pipe was out of the drain and it flooded the area, he had to cut a hole in the ceiling to dry everything out. Witness1 and that landlord believe that this was intentional.
27. Witness1 said that there is a lot of noise from the apartment. There are guests who are loud and disruptive. The noise could on some occasions would be partying and on other occasions be fighting. He said just recently there was a girl down there screaming that she "didn't want to die."
28. Witness3 said he wants nothing to do with the tenant, he has told him not to come to his place and not to be bothering his sister. He said that the tenant will still come over looking to borrow money. He also said that he came home one night and a girl was lying down in the pathway to witness3's door, waiting for the tenant to come home.
29. Witness3 said that there could be partying and noise any day of the week. He said he has to work and that the noise is disruptive.
30. The landlord and all the witnesses take issue with the tenant having shopping carts filled with stuff just left around the property.
31. Witness1 and witness3 live with the tenant and they both feel as though if the tenant doesn't move, then they would have to move.

Tenant's Position

32. The tenant agrees with the service of his termination notice as stated by the landlord.
33. The tenant said that he has been trying to be better and not cause issues at the house.
34. The tenant said he paid for the broken window.
35. He said he is using the shopping cart for support because he has injured his leg.
36. The tenant said he didn't intentionally flood the house with the washing machine. He said he spent hours trying to clean it up.
37. The tenant said that his last house did not burn down.
38. The tenant said he is trying to find a place, he doesn't want to live in a place where no one wants him there.

Analysis

39. The landlord's testimony was very unclear and confusing. He has had ongoing issues at the house, however, he hasn't really shown that the tenant is the cause of the issue. When the landlord says that someone is beating up the tenant, or the tenant is running into another apartment fearing for his life; this speaks to the tenant being a victim. When he says that a cab company won't come to the address or that the washing machine overflowed, it is unclear, with so many tenants in the house, who is actually the cause of these issues. The testimony of witness1 and witness3 speak more to the ongoing issues in the house.
40. Both witness1 and witness3 believe the tenant, and especially the company that he brings around to the house, are disruptive and potentially dangerous. Both witnesses have stated that they cannot continue living in the house with the tenant there.
41. Witness3 and the landlord have both shown concern for the safety of the actual structure of the house and the people in it. The tenant is smoking and does have open gas cans in the apartment.
42. 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.

43. I find that the tenant is interfering with the rights of the other people renting in the house, their lives are being disrupted, they have safety concerns and both are considering moving. One tenant has already moved.

44. 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.

45. The landlord's notice, as described in paragraph 16 and confirmed by the tenant in paragraph 32: was served to the tenant in person on 06-May-2022 with a termination date of 12-May-2022. The notice meets the requirements of the Act and was served in accordance with the Act.

Decision

46. The landlord's claim for an Order of Possession succeeds.

Summary of Decision

47. The tenant shall vacate the premises immediately.

48. 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.

49. The landlord is granted an Order of Possession.

June 2, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office