

Residential Tenancies Tribunal

Application: 2022 No. 463NL

Decision 22-0463-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 04 July 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. 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* and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach him by telephone. 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 he had personally served the tenant with the application on 17 June 2022, and she has had 17 days to provide a response. 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 his absence.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

7. The landlord stated that he had entered into a verbal rental agreement with the tenant, and her roommate, approximately 5 years ago. In February 2022, the tenant's roommate moved out and the tenant stayed on as the sole occupant. Since February 2022, the rent has been set at \$850.00 per month.
8. The landlord stated that for the past several months he had been receiving complaints from the resident in the downstairs apartment, ■■■, about the behaviour of the tenant. She complained that there are a lot of people coming and going to and from the tenant's unit and she stated that these visits can be very loud and they oftentimes go on into the early hours of the morning. ■■■ also told the landlord that the police have had to visit the unit on several occasions.
9. In support of his claim the landlord submitted an e-mail which he stated he had received from ■■■ in which she recounts these complaints about noise. The landlord also stated that his neighbours had also complained to him about the noise and about the frequent visits to the tenant's unit.
10. Because of the complaints he had received, the landlord issued the tenant a termination notice, and a copy of that notice was submitted with his application. This notice was issued under section 24 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 12 June 2022. That notice is dated 06 June 2022, but the landlord testified that it was delivered to the tenant on 17 June 2022.
11. 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

12. 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.

13. For the following 2 reasons, I find that the landlord's claim for an order for possession of the rented premises does not succeed.
14. Firstly, I find that the landlord has not presented enough compelling evidence to establish that ■■■'s peaceful enjoyment had been interfered with by the tenant. ■■■ was not called as a witness to present a first-hand account of what had been taking place at the unit, nor did the landlord present a sworn affidavit from ■■■ in which she recounts her experiences at her unit. I accept the landlord's claim that he had received complaints from ■■■, but his reports of what she had told him amount to no more than hearsay. The landlord did present a copy of an e-mail, which he stated was written by ■■■, but I cannot order someone to move out of their home based on 1 single e-mail. More credible evidence of serious interference is required.
15. But even if the landlord had presented enough compelling evidence to convince me that the tenant had been unreasonably interfering with ■■■'s quiet and

peaceful enjoyment, his claim still would not have succeeded as the notice does not meet the timeframe requirements set out in this section of the *Act*. Although the notice is dated 06 June 2022, on the 3 different occasions at the hearing when I asked him when he had delivered it to the tenant, he told me that it was delivered on 17 June 2022, and he apparently satisfied himself with that response by consulting a photograph he had taken.

16. But a notice under this section of the *Act* may only specify a termination date that is not less than 5 days after the notice has been served. If the notice was served on 17 June 2022, the earliest termination date the landlord could have specified in the notice would have been 23 June 2022. The landlord's notice states that the agreement is terminated on 12 June 2022.
17. For those reasons, the landlord's claim does not succeed.

Decision

18. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

08 July 2022

Date



John R. Cook
Residential Tenancies Tribunal