

Residential Tenancies Tribunal

Application 2022-0666-NL

Decision 22-0666-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:16 a.m. on 13-October-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 her by telephone ([REDACTED]) 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 she has been properly served. The landlord submitted an affidavit with her application stating that she had served the tenant with notice of the hearing, personally on 29-August-2022 for an earlier hearing date. Upon change of the hearing date, this office served the tenant with the notice of rescheduled hearing by prepaid registered mail. This package was tracked ([REDACTED] and the information shows it was sent on 08-September-2022 and picked up at the post office on 12-September-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.

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 a tenant contravenes peaceful enjoyment and reasonable privacy.

Issue 1: Vacant Possession of the Rental Premises

Landlord's Position

8. The landlord submitted the rental information package that she provided to the tenants (LL#02). She has a verbal monthly agreement with the tenant. The landlord initially rented the property to a man in April 2020. Sometime in May 2020 the male moved in a female and told the landlord that she was his girlfriend. In June 2020 the male moved out. He had paid a \$300.00 security deposit to the landlord and when he moved he had rent arrears; the male agreed that the landlord retain this deposit against monies owed.
9. The female continued to live there after the male tenant moved. She is now the landlord's tenant. Her rental period is from the 16th day of each month until the 15th day of the next month. She pays \$770.00 rent, which includes internet, on the 15th day of every month. The apartment she rents is in the basement of the landlord's house.
10. The landlord said that the tenant's behavior is interfering with her ability to enjoy her home. She said that the tenant has cars coming and going throughout the night. She said that they can come anytime between 11:00 p.m. and 6:00 a.m. She said that when they come sometimes the tenant goes out to the vehicles and sometimes the visitors come into the tenant's apartment. The landlord said that when she goes out into the vehicle she can see them lighting something up; she believes that they are doing drugs.
11. The landlord said that she is a light sleeper and that this coming and going does wake her. She said that this happens about once a week. She said that there is often a white truck and it has a loud motor. The landlord said she has asked the tenant, by text, to have her guest turn off the vehicle but she believes that the tenant is already out in the truck and doesn't receive the text. The landlord cleared up that usually this happens once a week and that it is just the one visitor coming one time, not a number of people coming and going all night. She said sometimes there could be 2 or 3 visitors.
12. The landlord said one night there were three cabs lined up in front of the apartment.
13. The landlord said that the tenant permits people to stay over. She said at the time of the notice, this was almost every night and that they could be loud. The landlord said she is afraid of some of those people.
14. The landlord said that the tenant has changed the locks on the apartment and hasn't given the landlord a copy of the key. She said that she hasn't gone in the apartment since the tenant moved in. She hasn't requested to go in, she is afraid to go there. She said some of the windows are broken and she assumes that there is damages inside the apartment.

15. She said that when the tenant gets angry or excited she yells. This could be inside the apartment or out in the yard. She believes that this occurs when she is intoxicated. She said her voice can be shrill and that this can be ongoing for up to a half an hour. She said that this has happened four or five times out in the yard, since she moved in. She said it happens about once a week when she is inside.
16. The landlord said that she wants to help the tenant and is hopeful that things will get better. The landlord said that the tenant is suffering with mental health issues and that she is seeking treatment.
17. The landlord said that she gave the tenant a termination notice (LL#03). The notice is on a “landlord’s notice to terminate early – cause” for interference with peaceful enjoyment. It was signed and dated for 08-May-2022 with a termination date of 15-May-2022. She said that she taped the notice to the tenant’s door and watched her remove the notice.
18. The landlord is seeking vacant possession of the rental premises.

Analysis

19. 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 -

(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.

(b) The landlord shall not unreasonably interfere with the tenant’s reasonable privacy and peaceful enjoyment of 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.

20. I find that the landlord’s claim for interference with peaceful enjoyment and reasonable privacy fails. The landlord’s application is for vacant possession of the tenant’s home and therefore it is incumbent on the landlord to show that the tenant is behaving in a manner that is excessive, aggressive or threatening.
21. The landlord’s claim doesn’t meet the burden of proof to show that the tenant is behaving in a way that is outside of normal everyday living. I acknowledge that the

landlord is negatively impacted by the tenant and her visitors. The landlord is afraid of the individuals who are staying at the apartment and there have been damages to the windows. The landlord would naturally have concerns. The burden of the landlord, however, is to show that the activities are excessive, the landlord's testimony that one person comes late at night and parks in front of the house for a few minutes once a week, doesn't fit the description of excessive. As well, the tenant having 4 or 5 loud arguments over a two year period is also not excessive.

22. The landlord has not meet the burden of proof in this case and I find that the notice is not valid.

Decision

23. The notice served to the tenant with a termination date of 15-May-2022 is not a valid notice. The landlord's claim fails.

Summary of Decision

24. The termination notice dated 15-May-2022 is not a valid notice.

October 14, 2022

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office