

Residential Tenancies Tribunal

Application 2022-0723-NL

Decision 22-0723-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:05 a.m. on 05-October-2022.
2. The applicant, [REDACTED] represented by [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 has a witness, [REDACTED], who is a tenant in another apartment in the house.

Preliminary Matters

5. The landlord submitted an affidavit (LL#01) stating that they had served the tenant with notice of today’s hearing on 14-September-2022 by courier, who left the notice with the tenant’s mother. The tenant confirmed service as stated.

Issues before the Tribunal

6. The landlord is seeking:
 - Vacant possession of the 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: Vacant Possession of the Rental Premises

Landlord's Position

9. The landlord submitted the rental agreement held with the tenant (LL#02). She said that the tenant moved in on 21-January-2022. He signed an agreement for 01-February-2022 until 31-January-2023. He pays \$700.00 rent on the first day of each month and he paid a security deposit of \$525.00 on 06-January-2022. The landlord is still in possession of the deposit.
10. The landlord said that she hadn't had too many interactions with the tenant and that there was never any issues with his rent. She said on 07-August-2022 she was reaching out to the second floor tenant about her lease renewal. At that time she received a complaint about the tenant. The tenant rents the first floor apartment in a three story house, each floor has a different unit. The second floor tenant will be called as a witness for the landlord.
11. The landlord said that the witness informed her that she was giving notice for the end of September. The witness told her in an email (LL#01) that she was having issues with the tenant on the first floor apartment and couldn't live there anymore. The witness said, in the email, that the tenant told her he had called the landlord and impersonated the SPCA about her cats, he has been verbally abusive to her, he is playing music on "full blast" and her floor vibrates, and she is in fear of her safety. The landlord didn't realize before this that there was any ongoing issues at the building and she asked the witness to call her and talk about what was happening.
12. At the time the landlord said that what was most important to her was that the tenant not feel unsafe in her own home. The witness provided the landlord with emails between herself and the tenant (LL#01). The landlord points out that the emails have a lot of profanity and are disrespectful. The witness also provided videos to the landlord showing the common stairwell outside the tenant's apartment, where in one video the tenant is yelling and calling someone "an idiot" (LL#05) and the other (LL#06) he has the music playing very loudly.
13. The landlord said at that time she gave the tenant a notice of eviction. The notice is in letter form and cites Section 24. The notice is signed and dated for 15-August-2022 with a termination date of 21-August-2022. She said that the notice was sent by courier on 15-August-2022, she provided the receipt (LL#01).
14. She said she tried to work the issue out with both parties and included an email (LL#04) to the witness on 18-August-2022, where she asks if the tenant behaves himself could they work this out. The witness says, in the response, that she doesn't want to work this out.
15. The witness said that she has lived in her apartment for over a year. She said she knew the tenant's mother first and had met the tenant a few times while he was a young person. She said then they met again once he moved into the building. She said that one time they "hooked up" after becoming intoxicated by drugs. She said she

immediately regretted doing this and told the tenant this, she felt that after this interaction the relationship changed.

16. The witness said that the tenant and his mother have been very disruptive to her life. She said that it started with a call to the landlord from the tenant pretending to be the SPCA about her cats. She said she does have six cats, and has made arrangements to rehome three of them.
17. She said that she has been receiving a number of texts and voice messages from both the tenant and his mother and the texts are berating her and her friends, telling her she'll die alone and that they hope her plane crashes. They had sent so many texts that she had to block their numbers on her phone. She said on one of the days she received 36 messages.
18. The witness said that the tenant's mother had told her that the tenant is bi-polar and that his behavior is unpredictable.
19. The witness said in addition to the texts, the tenant bangs his door so hard that you can feel it in the building, plays his music very loudly, she said he plays songs like Dennis Leary's "Asshole." He also had not replaced the battery in his fire alarm so it was constantly beeping. She said he told her in a text that he wasn't changing the battery because he knew she could hear the beeping.
20. She said that they share a common entry and when she is coming and going he calls her names. She said that on 03-October-2022, when she was coming home, she saw him out smoking on the front step and decided to walk around the block one more time to avoid him. After she went around the block, he was still on the step, so she decided she may as well go to the step to enter. She said that he kind of blocked her path and she had to ask him to step aside so that she could enter the building. She said that she unlocked the door and then ran up the stairs to her apartment.
21. 20-September-2022 she got up extra early to avoid them, but it didn't work. She said that they started calling her names. She went back into the building and he tore her mailbox off the building.
22. She said that the tenant's mother doesn't live there but does stay with him at times for up to a month.
23. She said that she is afraid of him and has reported him to the police on two separate occasions. She said that they took her statement but told her unless he directly threatens her she can't get a peace bond.
24. The tenant denies kicking the tenant in the knee.
25. The landlord confirms that she did receive a call from someone saying that they were with the SPCA and giving a report about the witness' cats.

26. The landlord said that both the tenant and the witness have behaved inappropriately. She said that they share an entranceway and that she served the tenant with a termination notice because she doesn't want anyone to feel unsafe in their own home as the witness states she does.

Tenant's Position

27. The tenant confirmed the details of the rental agreement. He also confirms receipt of termination notice as stated.
28. The tenant questions why the landlord didn't reach out to him to receive his side of the story. He provided a screen shot of the company site (TT#02) which has an answer to an inquiry about a peaceful enjoyment complaint from the company. In the answer the company states they would "work with all parties involved to resolve the issue." The tenant stated that an attempt to reach out to him, after the issuing of an eviction notice, is not an attempt to work with all parties.
29. The tenant said on the day that the tenant came up the stairs, she pushed him out of the way and screamed "can you get out of my way." He also says that on another occasion she kicked him in the knee and provided a picture of his knee (TT#01). He said after this happened he left town for a while for his own safety.
30. The tenant acknowledges that he is bi-polar and that he was on new medication. He confirms that there were some nasty text messages and apologizes for that. He said that the tenant blocked his number and that there haven't been messages since that time, which is almost two months.
31. The tenant questions how the tenant knows that it was him that tore the mailbox off the house. He says she has no proof that it was him and that they live in a bad neighborhood and that maybe someone else could have done it. He disputes that she has no evidence it was him who called the landlord saying he was the SPCA.
32. The tenant provided texts sent to him from the tenant (TT#05 & 06) saying things about him and being cruel.
33. The tenant also pointed out that he never received a copy of the Residential Tenancies Act, 2018, from the landlord. He questions how he is to know what the rules are that he is to follow, if he hasn't received the Act.

Analysis

34. In paragraph 25 the landlord said that both parties have behaved badly. The purpose of the hearing is not to determine who is the most or least wrong in this situation. I acknowledge that both parties shoulder some of the blame for the ongoing situation between the tenant and the witness. However, the questions to be answered are, did

the tenant interfere with the peaceful enjoyment of another person in the building and is the landlord's notice valid?

35. 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.*

36. 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.
37. The tenant's point that without a copy of the Act he would not be able to know that his behavior would be against the rules, as well as, his point that the landlord should be expected to "work with all parties involved to resolve the issue," is an ingenious attempt to deflect blame for his actions on another person. The tenant has apologized to the witness and the tenant knows his behavior was negatively impacting the witness.
38. The tenant's behavior falls within the definition of all three examples of an interference with peaceful enjoyment complaint:
- (i) excessive noise;
 - (ii) aggressive or obnoxious behaviour;
 - (iii) or (iii) threats and harassment.
39. The landlord has shown through her evidence and witness testimony that the tenant is unreasonably interfering with another tenant in the building. The landlord's eviction notice was served within the guidelines of the Act, as follows:

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.

40. I find that the landlord's claim for vacant possession succeeds and the tenant should have moved on or before 21-August-2022.

Summary of Decision

41. The landlord's claim for an order for vacant possession succeeds.
42. The tenant shall vacate the premises immediately.
43. The tenant shall pay to the landlords 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.

October 13, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office