

Residential Tenancies Tribunal

Application 2022-0732-NL

Decision 22-0732-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:09 a.m. on 14-September-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 reached her by telephone at the start of the hearing, but she said she was working and not available to attend 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 (LL#01) with his application stating that he had served the tenant with notice of the hearing, personally on 01-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
 - Hearing expenses reimbursed \$20.00

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 tenant contravenes peaceful enjoyment and reasonable privacy.

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

8. The landlord said that he has a term lease with the tenant he said it starts 01-July-2022 and finishes 30-June-2022. The landlord said that the tenant moved in around 01-July-2022. The landlord said that the tenant pays \$600.00 a month rent which is due on the 1st day of each month. He said she paid a security deposit of \$300.00 around the time she moved in; he is unsure of the exact dates. The landlord said he is still in possession of the deposit.
9. The landlord said that on 28-July-2022 he served the tenant with a termination notice for interference with peaceful enjoyment and reasonable privacy. The notice is for 05-August-2022. He submitted the notice into evidence (LL#02). He said he knocked on the tenant's door and she didn't answer. He then taped the notice to the door. While he was still in the yard, speaking with the upstairs tenant, he watched the tenant come out of her apartment and she took the notice off her door.
10. The landlord said the night before he gave the notice, on 27-July-2022, he received a call from the upstairs tenants saying that the police were there. He said that the tenant's daughter had come over, there was fighting and the police were called. He said that the door knob was broken at that time, picture provided (LL#04).
11. The upstairs tenants are a family with a preteen. They don't want to live somewhere where the police are being called for fighting. They have told the landlord that the police have been there since and they have been approached by the police to inquire where the tenant is.
12. The landlord provided text messages (LL#03), that the tenant has been sending himself and his wife. In the messages she is repeatedly asking if she has to move and about the rent. He believes there is an excessive amount of messages.
13. The landlord said the tenant was only living there a couple of weeks when these issues began. He is seeking vacant possession.

Analysis

14. 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.

15. I find that the landlord's claim for interference with peaceful enjoyment and reasonable privacy fails. His claim doesn't meet the burden of proof to show that the tenant is behaving in such a way, as to interfere with the upstairs tenants. I acknowledge that the police attended the apartment due to an altercation, but that one incident doesn't provide this board with enough information about the altercation, or the ability to determine if the tenant bares any responsibility or blame, she potentially could have been the victim.
16. The landlord also doesn't provide witness evidence from the upstairs tenant to show that their lives have been impacted by the downstairs tenant in a way that is interfering with their right to enjoy their home. The landlord has not meet the burden of proof in this case and I find that the notice is not valid.

Decision

17. The notice served to the tenant with a termination date of 05-August-2022 is not a valid notice. The landlord's claim fails.

Issue 2: Hearing expenses reimbursed \$20.00


18. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#05) and pursuant to policy 12.01, as the claim is not successful, he is not entitled to reimbursement of that cost from the tenant.

Summary of Decision

19. The notice served to the tenant with a termination date of 05-August-2022 is not a valid notice.

September 16, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office