

Residential Tenancies Tribunal

Application 2022-0748-NL

Decision 22-0748-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:58 a.m. on 12-September-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" did not attend.

Preliminary Matters

4. The tenant was not present or represented at 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, electronically to the tenant's email address, 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 \$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 is the following section of the *Residential Tenancies Act, 2018*: Section 24: Notice where the tenant contravenes peaceful enjoyment and reasonable privacy.

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

8. The landlord said that the tenant has a written rental agreement for a term. She said that the tenant moved in November 2020. She said that she renewed her lease on 01-June-2022 for a term until 31-May-2023. She said that the tenant was paying \$875.00 a month rent but that amount increased in July to \$901.75. She said that in November 2020 the tenant paid a security deposit of \$300.00 and that she is still in possession of the deposit.
9. The landlord said that she owns 9 properties on the street. For the purpose of clarification the tenant will be referred to as "the tenant," the next door neighbor will be referred to as "tenant2" and the tenant in the adjoining unit will be called "tenant3."
10. The landlord said that the tenant2 was visiting with tenant3 when the tenant came out into the yard and assaulted tenant2. Tenant2 told the landlord, that the tenant came out and approached her and said "I'm going to eat your face and I'm going to eat your kid's faces too. The tenant bit tenant2 over her eye. The landlord provided medical records (LL#02) as well as pictures (LL#03 – LL#06). The landlord also provided a sworn statement (LL#02) from tenant2 stating it was the tenant who assaulted her. The incident is being investigated by the RCMP. The pictures and medical records show that tenant2 required stitches and she had significant bruising.
11. Tenant2 and her children have safety concerns about the tenant especially after the assault. The children are afraid to go to the school bus stop alone. Tenant2 and the tenant share a common driveway.
12. The landlord also has elderly tenants who live across the street who are concerned for their safety and considering moving. The landlord said that many of her tenants are considering moving.
13. The tenant lives in the adjoining unit to tenant3 and they share a patio. The tenant has broken out her own windows, next to the patio, and uses the window to go in and out of her house when her boyfriend locks her out.
14. Tenant3 was a witness to the violent incident with tenant2 that occurred on her property and she and her child are afraid. She has told the landlord that they keep their doors locked at all times, they don't use the yard or the shared patio, and they don't barbecue. Her child is also afraid to go to the bus stop on her own. Tenant3 will not stay in the house when her husband isn't there.

15. The landlord said that there are a number of complaints about the tenant and her boyfriend, that her behavior is unpredictable and dangerous. The landlord said that most of the tenants on the street have considered moving and the lack of housing is the only reason they are still there.
16. The landlord said that she served the tenant a termination notice (LL#07), the notice is on a landlord's notice to terminate early – cause form, for interference with peaceful enjoyment and reasonable privacy. The notice is signed and dated for 01-September-2022 with a termination date of 07-September-2022. The landlord said she went to the unit herself on 01-September-2022 and the tenant wasn't home so she posted it on her door.
17. The landlord said that many of her tenants in the area are being impacted by this tenant's behavior and that she wants vacant possession of the property.

Analysis

18. 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.

19. The impact on the neighborhood is important to show the ongoing issues with the tenant, however, the landlord can't terminate the tenant's agreement based on issues within the neighborhood.
20. Tenant3's property adjoins to the tenant's property and they share the patio space. The shared patio space is integral to the argument for termination of rental agreement. Tenant3 and her family are unable to utilize this shared space or their yard due to the

behavior of the tenant. Tenant3 was entertaining a guest, tenant2, who is another tenant of the landlord, but a neighbor of the tenant. Based on the photographic evidence and hospital reports I accept that this lady was violently attacked while visiting with tenant3.

21. I find that the tenant is interfering with the rights and reasonable privacy of tenant3 and her family by impeding her ability to use the patio or yard areas.

Decision

22. The landlord's claim for an order for vacant possession succeeds.
23. The tenant shall vacate the premises immediately.
24. 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.

Issue 2: Hearing expenses reimbursed \$20.00

25. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#07) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

26. The tenant shall
 - Vacate the premises immediately.
 - 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.
 - Reimburse the cost of \$20.00 hearing expenses to the landlord.

The landlord is granted an Order of Possession.

September 13, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office