

Residential Tenancies Tribunal

Application 2022-0899-NL

Decision 22-0899-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:15 a.m. on 23-November-2022 and reconvened at 2:01 p.m. on 01-December-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 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 (LL#01) with her application stating that she had served the tenant with notice of the hearing, by prepaid registered mail ([REDACTED] [REDACTED]) on 31-October-2022. The tenant did not pick up the mail, however Section 42 of the *Residential Tenancies Act, 2018*, considers prepaid registered mail delivered after 5 days. 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 tenant contravenes peaceful enjoyment and reasonable privacy.

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

8. The landlord said that she has a verbal rental agreement with the tenant. She said that she purchased the property in 2011 and the tenant lived there before she owned the property. She pays \$450.00 rent on the first day of each month. She did not pay a security deposit.
9. The landlord provided a copy of the termination notice. It is on a Landlord's notice to terminate early form. The notice is signed and dated for 30-September-2022 with a termination date of 08-October-2022. The reason for termination is, interference with peaceful enjoyment and reasonable privacy.
10. The landlord said that she delivered the notice to the tenant in person on 30-September-2022. She placed the notice in the tenant's hand and the tenant threw the notice at her. She said that the tenant went into the apartment, so she picked up the notice and posted it on her door.
11. The landlord said that up until this past year, the tenant was a good tenant with very few issues. She said that the tenant's behavior became concerning this past summer and that she and the tenant's parents have become concerned for the tenant's well-being.
12. In June, the tenant called the police and reported that the downstairs tenants are stealing her electricity. The landlord said that the house has two separate meters.
13. Then calls started coming in to the landlord from the tenant, complaining that people are trying to come in through holes in her floor, people are stealing her electricity and people come into her apartment while she is sleeping.
14. In July the tenant requested accommodations for a renovation for a handicap washroom. The landlord said that if she requires special equipment, they wouldn't provide that, but the tenant should check with her worker to see if they can get the equipment for her. At that time the landlord told her, they would like to freshen up her apartment; she made an offer to update and paint. The landlord said when the staff went over to do the work, the tenant refused to let them in.
15. The landlord then received a call from the tenant where she said her stove exploded. The stove was broken and it took a number of visits from the handyman to remove the stove before the tenant would let him in. When he tried to bring in the new stove, he ran into the same issues. The handyman now refuses to go to her apartment.

16. The landlord said that she receives numerous calls a day from the tenant. The landlord provided a sample of the messages (LL#05 – 23). In the calls the tenant starts out low and mumbling, she is almost inaudible, as the call progresses, the tenant's speech quickens, gets louder to the point of screaming and she is using profanity and threatening. The landlord said that this started in June and is still ongoing. She said she receives about 10 calls a day. She said occasionally there will be a day with no calls, but for the most part, it is every day. The landlord said she has to screen all of her calls because of this one tenant.
17. The landlord said that the tenant also accuses the tenants downstairs of stealing her electricity, moving her walls, moving the hot water tank, spying on her, etc. She said that she is very aggressive and confrontational with them. In addition to this, the tenant calls the police to report the downstairs tenants for these things.
18. The landlord said that the downstairs tenants have been very patient and understanding of the tenant's deteriorating mental health. It should be noted that this has been ongoing since June. She said that they have a small child and the tenant's behavior has been difficult on everyone.
19. The landlord said that the police said they can't do anything because the tenant is unwell. She said that it is not her responsibility to have to deal with the tenant either. She said that the downstairs tenants should not be subject to the tenant's behavior.
20. The landlord is seeking vacant possession.

Analysis

21. 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.***

22. 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.
23. I accept the testimony and evidence of the landlord that the tenant's behavior is disruptive. It is reasonable to believe that the tenant's threats and accusations, as well as, the involvement of the police would have a negative impact on the downstairs family.
24. I find that the tenant's behavior is aggressive, threatening and harassing to not only the landlord but also to the downstairs tenants. It is unreasonable for them to be subject to these behaviors in their own home. The landlord's claim for vacant possession succeeds.

Decision

25. The landlord's claim for vacant possession succeeds.

Issue 4: Hearing expenses reimbursed \$36.88

26. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#04) and \$16.88 for the cost of prepaid registered mail (LL#03) pursuant to policy 12.01, is entitled to reimbursement of those costs from the tenant.

Summary of Decision

27. The landlord's claim for an order for vacant possession succeeds.
28. The tenant shall vacate the premises immediately.
29. 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.
30. The tenant shall reimburse the landlord \$36.88 for her hearing expenses.

December 5, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office