

Residential Tenancies Tribunal

Application 2022-0976-NL

Decision 22-0976-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:15 a.m. on 12-January-2023.
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.
4. The landlord presented three witnesses who live in the same apartment building as the tenant. They are as follows: [REDACTED]: Witness1, [REDACTED]: Witness2 and [REDACTED]: Witness3.

Preliminary Matters

5. 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 (LL#01) with his application stating that he had served the tenant with notice of the hearing, electronically on 12-December-2022 at approximately 11:00 a.m. 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

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, Section 24: Notice where a tenant contravenes peaceful enjoyment and reasonable privacy and Section 35: Service of documents.

Issue 1: Vacant Possession of the Rental Premises

Landlord's Position

9. The landlord said that he entered a written term rental agreement (LL#02) beginning 01-August-2022 and ending 31-July-2023. He stated that the rental period is from the first day of each month until the last and that rent is \$800.00 and is due the first day of each month. The landlord continued, that the tenant is on income support and he has only received the first month's rent to date. He said that before taking occupancy she also paid a \$350.00 security deposit and he is still in possession of that deposit.
10. The landlord said that there have been ongoing issues with the tenant. The building is non-smoking and that there are continuous complaints of the smell of both cigarette and marijuana smoke coming from her apartment. In addition to this, there have been noise and fighting complaints that have resulted in the police attending her apartment at least a dozen times since November.
11. Due to the ongoing issues with the tenant the landlord served her with a termination notice (TT#03). The termination notice is signed and dated for 03-November-2022 with a termination date of 10-November-2022. He served the tenant electronically and provided proof (TT#04) of the email with a send time of 5:48 p.m. on 03-November-2022.
12. The landlord provided two separate text message complaints (LL#04 and LL#06) that he received from neighboring apartments. The individuals who sent the complaints were unable to attend the hearing today, he has provided a list of other tenants to testify (LL#05).
13. Witness1 is the partner of the tenant who wrote the first text message (LL#04). Witness1 stated that he and his partner live below the tenant and there are ongoing issues with noise. He alleged that there are always people coming and going from the apartment and believes that the tenant sleeps during the day and is up most of the night. He declared that there is often fighting and noise and that this can happen anytime during the day or night. He believes that there is drug use going on in the apartment and that the police have been there three times recently.
14. Witness2 said she and her husband live across the hall from the tenant. She said that they often hear fighting and the sound of a man's voice, as well as squealing. They have noticed that the police have come to the apartment of the tenant a number of times.

15. Witness2 said that she has asthma and that the building is supposed to be non-smoking but there is often the smell of cigarette or marijuana smoke coming from the apartment. She is also concerned about the potential fire hazard.
16. Witness2 also said that she has a woman who comes and takes care of their cats when they are away; because of the police presence and the issues with the tenant this woman refuses to come there now as she is afraid.
17. Witness3 said that he has lived in the apartment building for 10-11 years. He indicated he lives just down the hall from the tenant. He testified that the tenant is often making noise and she was fighting with another tenant between 7:30 – 8:30 last night.
18. Witness3 stated that there can be noise coming from the apartment morning noon and night; there is no particular time of day when there could be fighting and noise. He said when she is fighting at night it wakes him.
19. Witness3 also declares that there is a constant smell of smoke coming from the apartment.
20. The landlord said that there have been issues since the tenant moved in. She has complete disregard for the no smoking clause in her contract and this has a negative impact on her neighboring apartments. He stated that the issues with the noise, fighting and police presence has a negative impact on the neighbors as well as the business. He believes that this has created a negative image of the apartment buildings in the community.
21. The landlord testified that he receives complaints daily and that he is hopeful that his application for an order of possession will go through because this tenancy is not working out.

Analysis

22. 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.

23. 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.

24. I accept the testimony of the landlord and the witnesses that there has been excessive traffic and noise at the tenant's apartment. The witnesses' testimonies concerning the noise, smoking and continuous police presence indicates interference with the rights of the witnesses to peacefully enjoy their apartments.
25. The landlord's termination notice is dated for 03-November-2022 with a termination date of 10-November-2022. The landlord submitted an affidavit to show that this notice was emailed at 5:48 p.m. As the time the email was sent is after 4 p.m., in accordance with Section 35 (6) of the *Residential Tenancies Act, 2018*, the notice is considered served as of 04-November-2022 as follows:

Service of documents

35. (6) For the purpose of this section, where a notice or document is sent electronically, it shall be considered to have been served on the day it is sent, if the document is sent by 4 p.m., or the next day that is not a Saturday or holiday, if the document is sent after 4 p.m.

26. I accept that the landlord served the tenant with the notice on 04-November-2022 and the service on that date meets the requirement of not less than 5 days' notice; as shown in Section 24, of the *Residential Tenancies Act, 2018*, below:

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.

27. I find that the tenant is interfering with the rights of other tenants who live in the apartment building, I also determine that the notice served by the landlord is a valid notice and was served in accordance with the Act. The tenant should have moved by 04-November-2022.

Decision


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

Summary of Decision

29. The landlord's claim for an order for vacant possession succeeds.
30. The tenant shall vacate the premises immediately.
31. 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.

January 17, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office