

Residential Tenancies Tribunal

Application: 2022 No. 978NL

Decision 22-0978-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:17 PM on 28 November 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the tenant", was not in attendance.

Issues before the Tribunal

3. The landlord is seeking an order for vacant possession of the rented premises.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 10, 21 and 24 of the *Residential Tenancies Act, 2018*, section 4 of the *Occupancy and Maintenance Regulations* issued under the *Urban and Rural Planning Act*, and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenant was not present or represented at the hearing. I telephoned him at the beginning of the hearing and I reminded him, on his message manager, of the telephone number for the hearing, as well as the ID number. 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 he has been properly served. With her application, the landlord submitted an affidavit stating that she had personally served the tenant with the application on 12 November 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 his absence.

7. The landlord called the following witnesses

- [REDACTED] ("[REDACTED]") – landlord's roommate
- [REDACTED] ("[REDACTED]") – landlord's roommate

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

8. The landlord stated that she had entered into a 1-year, fixed-term lease with the tenant on 02 September 2022. The agreed rent was set at \$1000.00 per month and the landlord stated that the tenant had paid a security deposit of \$750.00.
9. The rental unit is a basement apartment, and the landlord lives in the upstairs apartment, along with [REDACTED] and [REDACTED].
10. The landlord complained about 2 general issues she has had with the tenant since he moved into the unit. On the one hand, there have been numerous loud and violent disturbances taking place in the tenant's unit, and the police have been making frequent visits to that unit in response to complaints about those incidents. On the other hand, the landlord claimed that the tenant is smoking in his apartment, even though it is a non-smoking unit, and the smell of smoke is making its way into her upstairs apartment.
11. The landlord's witness, [REDACTED], testified that on 10 September 2022, at about 1:00 AM, she was woken by the sounds of a violent altercation taking place between the tenant and his girlfriend. She stated that it sounded as if they were "thrashing each other about" and she claimed that she was concerned for the safety of the tenant's girlfriend. [REDACTED] contacted the landlord, who was not at home at the time, and she was advised to call the police, which she did. [REDACTED] stated that incidents of this sort have been taking place continually, and police have visited the unit on many occasions. The landlord, as well as [REDACTED], corroborated that testimony at the hearing.
12. One particularly violent altercation happened on 22 October 2022. On that date, [REDACTED] that the tenant left his apartment after being stabbed by his girlfriend, and he came knocking on [REDACTED]'s door. She testified that the tenant was drenched in blood and he was bleeding all over the patio and the driveway. She also stated that the tenant was screaming at her on that date and she again had to call the police.

13. As a result of that incident, the tenant's girlfriend was arrested, and a peace bond was put in place whereby she was not to go near the tenant or the rental unit. Additionally, on that date, the rental unit was deemed a crime scene by the police, and no one was permitted to reside there until the police had concluded their investigation. █ and █ were also not permitted to stay in their upstairs apartment, and they were temporarily housed in a hotel with the assistance of the Red Cross.
14. The landlord, █ and █ all reported that things have not improved since then, and they complained that the tenant has allowed his girlfriend to return to the property. The landlord also stated that the tenant also has other guests visiting the unit, at all hours of the night, and she testified that on a couple of occasions, the tenant's guests have even tried to enter her unit, and the homes of her neighbours.
15. Besides these loud and violent altercations, the landlord stated that the tenant has been smoking cigarettes and cannabis in his apartment. She stated that, according to their rental agreement, the tenant is not permitted to smoke in the unit, but he has continued to do so despite the landlord's requests that he stop. The landlord stated that she finds the smell of the smoke entering her apartment to be unpleasant. █ testified that she has some chronic pain issues, and the smell of the smoke coming through the vents is causing her increased pain.
16. The landlord stated that because of the behaviour of the tenant, she can no longer have friends visit her at her home, and some family members, who live out of province, have even had to cancel their travel plans to come see her.
17. █ stated that she feels traumatized by the behaviour of the tenant and she claimed that she suffers panic attacks when she is in her apartment. She also testified that she is concerned for her safety and fears that the tenant will physically retaliate.
18. As a result of the stabbing which occurred on 22 October 2022, the landlord issued the tenant a termination notice, and a copy of that notice was submitted with her application. That notice was issued under section 21 of the *Residential Tenancies Act, 2018* (notice where premises uninhabitable) and it had an effective termination date of 23 October 2022, the same day it was issued.
19. The landlord stated that she had issued that notice to the tenant because the police cordoned off the rental unit, deeming it a crime scene, and the tenant was not allowed to reside there, making it uninhabitable.
20. The tenant did not comply with that notice, and on 04 November 2022 she issued him a second notice. This second notice was issued under section 24 of the Act (notice where tenant contravenes peaceful enjoyment and reasonable privacy) and it had an effective termination date of 10 November 2022.

21. The landlord stated that the tenant has not vacated as required, and she is seeking an order for vacant possession of the rented premises.

Analysis

22. Let me first deal with the termination notice that was issued on 23 October 2022. The rental unit is located in [REDACTED], and it therefore falls under the umbrella of the *Occupancy and Maintenance Regulations* issued under the *Urban and Rural Planning Act*. According to section 4 of those regulations:

Occupancy

4. (1) A person shall not occupy for human habitation or otherwise, or be the owner of, permit to be occupied for human habitation or otherwise, a dwelling or structure which does not conform to the standards set out in these regulations.

That is, a rental unit that is not maintained in accordance with the standards set out in those regulations is “unfit for habitation.”

23. Although I accept the landlord’s claim that the tenant had been stabbed on 22 October 2022, that there was a lot of blood found in his unit, in the driveway and on the landlord’s steps, and that the police had deemed the unit a crime scene and forbade anyone from residing there, I was not satisfied that any of this made the tenant’s unit unfit for habitation, as contemplated by the *Residential Tenancies Act, 2018*. There is no mention in the regulations concerning the spillage of blood, and although I don’t doubt that the police had forbidden anyone from residing at the unit during their investigation, that was not because the unit was uninhabitable or because it was in violation of any of the regulations. Accordingly, I find that the termination notice issued to him on 23 October 2022 is not valid.
24. With respect to the second notice, statutory condition 7, set out in section 10 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.

and according to section 24:

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.*

25. I found the testimony of the landlord and her witnesses to be credible and believable and I accept their claims that there are frequent loud and violent altercations taking place in the tenant's unit and that there are frequent police visits as a result of those disturbances. I also accept their claim that there was a stabbing at the unit on 22 October 2022 and that the tenant's girlfriend was subsequently arrested. That sort of behaviour is patently unreasonable, and I accept their claims that they feel terrorized and frightened.
26. I also accept their joint testimony that the tenant has been smoking in the unit, and that the smell of smoke in entering their upstairs unit. Given that this is a non-smoking unit, and given the health issues that [REDACTED] suffers, I also find, on this point, that the tenant had been acting unreasonably.
27. All of these combined issues have clearly had a significant impact on the quiet and peaceful enjoyment of the landlord and her roommates, and I find, therefore, that she was in a position, 04 November 2022, to issue the tenant a termination notice under section 24 of the Act.
28. As the notice meets all the requirements set out here, it is a valid notice.

Decision

29. The landlord's claim for an order for vacant possession of the rented premises succeeds

30. The tenant shall 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.

Issue 2: Hearing Expenses

31. The landlord paid a fee of \$20.00 to file this application. As her claim has been successful, the landlord shall retain that amount of the security deposit.

29 November 2022

Date


John R. Cook
Residential Tenancies Tribunal