

Residential Tenancies Tribunal

Application: 2022 No. 1011NL

Decision 22-1011-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:01 PM on 04 January 2023 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". 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, 20, 22, and 24 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach her by telephone. 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 his application, the landlord submitted an affidavit

stating that tenant had been served with the application, by e-mail, on 16 December 2022, and a copy of that e-mail was submitted with his application. 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.

7. The landlord called the following witnesses:

- [REDACTED] ("[REDACTED] C") – superintendent at residential complex
- [REDACTED] ("[REDACTED] ") – resident in adjacent complex, unit 1
- [REDACTED] ("[REDACTED] ") – resident in unit 6
- [REDACTED] ("[REDACTED] ") – resident in unit 5

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

8. The landlord stated that he had entered into a 1-year, fixed-term lease with the tenant on 01 October 2022, and a copy of that executed agreement was submitted with his application. The agreed rent was set at \$850.00 and it is acknowledged in the lease that the tenant had paid a security deposit of \$350.00.
9. The rental unit is an apartment in a 14-unit complex, and this complex is situated next to another 8-unit complex.
10. The landlord testified that when the tenant was first considering renting this apartment, she had indicated to him that she would need a ground-floor unit as her father would be residing with her and she is his caregiver. He complained, though, that the tenant's father had not moved in with her, but rather another person who has not been approved.
11. He also complained that there is a no-pet policy in place for this tenancy, and he pointed to Part 11 of the submitted lease as evidence of that claim. However, the landlord stated that the tenant is now keeping 2 large dogs at the unit, and he has received numerous complaints from the other residents at these 2 complexes that these dogs are allowed to roam about the property, off-leash, even though they are very aggressive. He also complained that these dogs have been defecating on the grounds and the mess is not being cleaned up by the tenant.
12. The landlord also stated that even though there is a designated parking lot for residents at the tenant's complex, she frequently parks in the laneway, blocking in the residents in the adjacent complex.
13. In support of these claims, the landlord called 4 witnesses.

14. █ is the landlord's superintendent in the complex in which the tenant resides. He corroborated the landlord's claim that the tenant is keeping 2 large dogs in her unit and that they are frequently off-leash and roaming around the ground of the 2 complexes. He stated that these dogs are not friendly and that they are constantly barking, and he testified that he has received 2 complaints from the tenants in his complex about the noise these dogs are making.
15. █ lives in the adjacent complex and has an apartment directly across from the tenant's. She also complained that the tenant's dogs are aggressive and that they are always barking, and she testified that she cannot take her garbage from her apartment to the outside bins as these dogs would lunge at her. As a result, her husband has had to take their garbage with him when he leaves for work every day. She also testified that the loud barking from these dogs is disturbing her sleep and she wakes several times a night.
16. █ also complained that the tenant is parking in the laneway between the 2 complexes, blocking her driveway. She also testified that the tenant's visitor's cars are constantly shining their headlights in her window.
17. █ made the same sorts of complaints about the tenant's dogs. Although she is not personally afraid of these dogs, she did claim that they were intimidating and that they were constantly barking. She testified that she has been awoken from her sleep on at least 5 occasions by their barking. She also reiterated the landlord's claim that there is a lot of dog feces on the grounds that the tenant has not cleaned up.
18. █ told a similar story to those provided by the landlord and these witnesses. He stated that these dogs are constantly barking and howling, and he testified that there is dog feces everywhere. He also claimed that the barking from these dogs can oftentimes be heard in the early hours of the morning and he is also frequently awoken from his sleep.
19. Because of these complaints, the landlord issued the tenant a termination notice on 03 November 2022, and a copy of that notice was submitted with his application. That notice was issued under section 24 of the *Residential Tenancies Act, 2018*, and it had an effective termination date of 10 November 2022.
20. The landlord stated that the tenant has not vacated as required, and he is seeking an order for vacant possession of the rented premises.

Analysis

21. The lease submitted by the landlord shows that the tenant was not supposed to be keeping any pets, and I find that the tenant is clearly in breach of that agreement by allowing these 2 large dogs to reside in her unit and allowing them

to roam the grounds of these 2 complexes. The tenant is also in breach of her rental agreement insofar as she is not cleaning up after these dogs after they defecate on the grounds of the unit—according to statutory condition 2, set out in section 10 of the *Residential Tenancies Act, 2018*, and reproduced in Part 9 of the submitted rental agreement, the tenant has an obligation to keep her unit clean, and presumably this includes the common areas she shares with the other residents at the complex.

22. I find that she is also in breach of her agreement in that she is not parking in her designated parking area, and she has allowed someone to stay at the unit who was not initially approved by the landlord.
23. Where a tenant commits a breach of her rental agreement, or where she does not comply with statutory condition 2, the landlord may give a notice to remedy the breach, or a notice to come into compliance with her obligations, and if she fails to heed that notice, the landlord may terminate the tenancy. If the notice concerns a material breach, the landlord may issue a 1-month notice under section 20 of the *Residential Tenancies Act, 2018* (notice where material term of agreement contravened), and where the notice concerns statutory condition 2, he may issue a 5-day notice under section 22 (notice where tenant's obligations not met).
24. In the case at hand, though, the landlord has elected to terminate this tenancy because the tenant had not complied with another of the statutory conditions, number 7, which 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.

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. As indicated above, that the tenant has been keeping pets, that she has not been cleaning up after them, that she is not using her designated parking spot, and that she is allowing an unapproved person to reside with her, these are issues that are best addressed though sections 20 and 22 of the Act, and do not seem to touch the issue of peaceful enjoyment, as contemplated in section 24.
26. I do find, though, based on the corroborated testimony of the landlord's witnesses, that these dogs the tenant is keeping at the complex are aggressive and noisy. █ indicated that she is afraid of these dogs, and she no longer allows her child to play outside the complex. She also complained that they run at her when she tries to dispose of her garbage. All the witnesses reported that these dogs are noisy and that they can be heard barking and howling at all hours of the day and night. Besides being fearful of these dogs, these witnesses also testified that they the barking is interfering with their sleep.
27. Accordingly, I find that the tenant had not merely breached her rental agreement by bringing these animals into the complex, I also find that doing so was unreasonable because of the way in which these dogs have been behaving, especially given the close proximity of the adjoining units at the complex, and given that there is a no-pet policy in place. That sort of aggressive and noisy behaviour is clearly interfering with the quiet and peaceful enjoyment of these residents.
28. As such, I am of the view that the landlord was in a position, on 03 November 2022, to issue the tenant a termination notice under this section of the Act.
29. As the notice meets all the requirements set out here, it is a valid notice.

Decision

30. The landlord's claim for an order for vacant possession of the rented premises succeeds
31. 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.

06 January 2023

Date


John R. Cook
Residential Tenancies Tribunal