

Residential Tenancies Tribunal

Application: 2022 No. 1090NL

Decision 22-1090-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 30 January 2023 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED]. The respondent, [REDACTED], hereinafter referred to as "the tenant", was not 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 and 24 of the *Residential Tenancies Act, 2018*, rule 29 of the Rules of the Supreme Court, 1986, and David Mullin's Administrative Law, 3rd ed. (Carswell, 1996).

Preliminary Matters

6. The tenant was not present or represented at the hearing and no number was available where he could be reached. 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 at the hearing stating that the tenant was personally served with application on 10 January 2023. 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.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

7. The landlord stated that she had entered into a monthly rental agreement with the tenant on 03 March 2011. The current rent is set at \$135.00 per month, and no security deposit was collected.
8. Since the summer of 2022, the landlord stated that she had been receiving complaints from her other residents she rents to, who live near the tenant, about the tenant's behaviour.
9. According to these complaints, the tenant has been throwing a lot of loud parties in his unit, and there are reports that there is drug use taking place. She also stated that there is an increased police presence at the property because of these parties. She stated that these parties go on all through the night, and they are disturbing these other residents and causing them stress. She testified that some of these residents have even requested to be transferred to other units because of the behaviour of the tenant.
10. One resident even complained that on one day, visitors of the tenant tried to enter her unit, and had even broken her window. There are also reports that these visitors have been entering the tenant's unit through his basement window, and human feces has been found outside these windows.
11. Because of these complaints the landlord had received about the tenant, on 06 December 2022 she issued him a termination notice, a copy of which was submitted with her application. That notice was issued under section 24 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 12 December 2022. The tenant has not complied with that notice, and the landlord is seeking an order for vacant possession of the rented premises.

Analysis

12. 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.

13. Although I accept the landlord's claim that she had been receiving complaints about the tenant's behaviour since the summer of 2022, I find that she had not presented enough credible evidence which would lead me to conclude that those complaints are warranted.
14. No witnesses were called at the hearing to give any first-hand testimony about what had been taking place at the tenant's unit, and the only evidence submitted by the landlord at the hearing were her statements about what other people had told her. That is, the only evidence presented at this hearing concerning the tenant's behaviour was hearsay evidence.

15. Although this Tribunal is not bound by the rules of evidence found in our courts (cf. s. 46.(2)(c) of the *Residential Tenancies Act, 2018*), it would be unfair and a violation of the principles of natural justice to evict the tenant based on these unfounded complaints alone. As David J. Mullan states in Administrative Law:

§163 Even though it is not bound by the strict rules of evidence, a tribunal may only act upon legally cogent evidence. Although an administrative tribunal may admit hearsay evidence, basing a finding which has serious consequences exclusively on hearsay and opinion evidence may still amount to a denial of natural justice or procedural fairness.

16. For this reason, the landlord's claim does not succeed.

Decision

17. The termination notice issued to the tenant on 06 December 2022 is not a valid notice.

18. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

03 February 2023

Date

John R. Cook
Residential Tenancies Tribunal