

Residential Tenancies Tribunal

Application: 2023 No. 15NL

Decision 23-0015-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:05 AM on 08 February 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 also in attendance. She was represented by [REDACTED] ("[REDACTED]") of the [REDACTED]
[REDACTED]

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*.

Preliminary Matters

6. The landlord called the following witnesses:
 - [REDACTED] ("[REDACTED]") – resident in main floor apartment at complex
 - [REDACTED] ("[REDACTED]") – resident in top apartment at complex
 - [REDACTED] – landlord's maintenance worker

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

7. The landlord stated that he had rented this apartment to the tenant's boyfriend, S, about 6 years ago, and when S passed away, about a year later, the landlord then entered into a rental agreement with the tenant. The current rent is set at \$1000.00 per month.
8. The landlord claimed that he had been having numerous issues with the tenant over the past several years, but he stated that things have gotten significantly worse over the past few months. He stated that he has been receiving complaints from both [REDACTED] and [REDACTED] about the noise coming from the tenant's apartment, and he stated that there are a lot of people coming and going from her apartment, and that they are sometimes even loitering in the common hallways. The landlord also stated that [REDACTED] had reported to him that the tenant had tried to forcibly enter his apartment on one occasion, and he also reported that the tenant had thrown [REDACTED] against the wall of her apartment one day when he was visiting her to fix her phone.
9. The landlord also stated that the tenant's neighbours had been complaining about her behaviour, and he also claimed that his maintenance worker, [REDACTED], had been having trouble with the tenant as well.
10. The landlord also complained that the tenant had been constantly telephoning him over the past 2 months, and some of these calls are being made at 3:00 and 4:00 in the morning. In these calls, the landlord claimed that the tenant is "loaded drunk", that she is cursing and swearing, and she had even threatened to send a gang after him. The landlord stated that because the tenant had been making so many calls he has had to block her number.
11. [REDACTED] was called as a witness and he acknowledged that he had been complaining to the landlord about the tenant. He reported that during the Mardi Gras celebrations, while he was at work, he received a video call from his girlfriend in which she reported that the tenant was arguing and yelling in the common hallway. He stated that the tenant then tried to force her way into his apartment, and his girlfriend had to bar the door, and also had to kick out at the tenant to prevent her from entering. [REDACTED] testified that this was not the first time an incident like this had occurred.
12. [REDACTED] also complained that the tenant is very noisy, and he can hear constant banging in the side stairwell. He also stated that there are many people visiting the tenant, and they sometimes are found sleeping in the common hallway. [REDACTED] reported that on one occasion, he had even found feces in that hallway. He testified that he does not feel safe in the complex, and he stated that the tenant had been significantly interfering with his peaceful enjoyment.

13. [REDACTED] had also been complaining to the landlord about the tenant, and at the hearing he recounted an incident which took place in the tenant's unit, while he was visiting her to assist her with her phone. He claimed that after he had taken some pictures on the phone, the tenant had accused him of breaking it. She then ordered [REDACTED] to sit down and fix the phone, and when [REDACTED] went to leave the apartment, the tenant pushed him against the door and started to say some "nasty words" to him.
14. [REDACTED] is the landlord's maintenance worker, and has been working for him for about 6 years. He also testified that he had been receiving complaints from the other residents living at the complex, as well as from neighbours, about the behaviour of the tenant, and in particular about the noises coming from her unit in the early hours of the morning. [REDACTED] also recounted 2 incidents when he had gone to the tenant's unit, one time to repair a toilet, and another time to install a door. On both occasions, he claimed that the tenant was "bawling and screaming" at him, and she was very upset. And like the landlord, he also stated that the tenant is constantly telephoning him, at all hours of the night and day.
15. Because of these complaints, the landlord issued the tenant a termination notice on 05 January 2023, 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 12 January 2023.
16. The landlord stated that the tenant has not vacated as required, and he is seeking an order for vacant possession of the rented premises.

The Tenant's Position

17. The tenant claimed that the landlord's allegations were "balderdash" and she demanded that he provide her with the dates and times that these incidents occurred. With respect to [REDACTED]'s claim that she had had an altercation with his girlfriend and tried to enter his apartment, the tenant claimed that [REDACTED] had no evidence to show that she was the person involved in that incident, and she suggested that it might have been one of the "crack whores" who were frequently breaking into the complex.
18. With respect to [REDACTED]'s testimony, the tenant claimed that it was actually [REDACTED] who was disturbing her peaceful enjoyment. She stated that [REDACTED] often wakes her up in the middle of the night as she can hear him going up and down the stairs, making banging noises. She stated that she had to call the police as a result, and she has also complained to the landlord.
19. With respect to the calls that the tenant had been making to the landlord and to [REDACTED], she claimed that there were numerous maintenance issues in the apartment that the landlord refused to address, including mold and cracks in the walls. [REDACTED] corroborated the tenant's claim that repairs were required at the apartment.

20. █ stated that over the last few months, in consultation with her case manager, the tenant had been working through some of the mental health and legal problems she had run into, and █ testified that she had been making significant progress. She stated that the tenant is a part of a peer support group at the █, and she has weekly meetings with a registered nurse practitioner as well as a mental health nurse. █ claimed that, as a result, the tenant has been developing healthier relationships, and she is learning to draw boundaries, and she is no longer allowing certain individuals into her home.

21. █ stated that she understands the landlords concerns, but she pointed out that the tenant is working to address those issues. She argued that if the tenant were to lose her housing now, at this point, all the progress she made over the last several months would be lost.

Analysis

22. 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.

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.*

23. I accept the testimony of the landlord's witnesses, and I find that, based on that testimony, that the tenant had tried to force her way into [REDACTED]'s apartment, that she had pushed [REDACTED] up against a wall, and that she had been screaming and cursing at [REDACTED]. I also accept the landlord's corroborated testimony that the tenant is oftentimes making loud noises in her apartment and that these noises are waking the other residents in the complex from their sleep.
24. That sort of behaviour, as described by these witnesses, is clearly unreasonable and antisocial, especially considering that the tenant is living in a complex with 2 other adjoining apartments. I also accept the claims of both [REDACTED] and [REDACTED] that the tenant's behaviour, as so described, is interfering with their quiet and peaceful enjoyment.
25. I do accept the tenant's claim that she is trying to find peace in her life, and I also accept [REDACTED]'s claim that the tenant has been taking important steps in an effort to address some of the issues she has been wrestling with. Nevertheless, the question I am faced with is whether the tenant had been acting unreasonably towards the other residents at the complex and whether those actions had interfered with their quiet and peaceful enjoyment. Although the tenant may be able to turn things around in the future, it does not change the fact that for a period of months, she had been acting in contravention of statutory condition 7, quoted above.
26. Accordingly, I am of the view that the landlord was in a position, on 05 January 2023, to issue the tenant a termination notice under this section of the Act.
27. As the notice meets all the requirements set out here, it is a valid notice.

Decision

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

30. The landlord paid a fee of \$20.00 to file this application. As his claim has been successful, the tenant shall pay this hearing expense.

21 February 2023

Date


John R. Cook
Residential Tenancies Tribunal