

Residential Tenancies Tribunal

Application 2023-0016-NL

Decision 23-0016-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:15 p.m. on 20-February-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” did not attend.

Preliminary Matters

4. The second respondent [REDACTED] is not in a landlord tenant relationship with the landlord. She is a tenant of the tenant and has been removed from this application.
5. The tenant was not present or represented at the hearing and I reached him by telephone at the start of the hearing, however he disconnected the call. 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. The landlord submitted an affidavit (LL#01) as well as proof of service (LL#01) with his application stating that he had served the tenant with notice of the hearing, electronically ([REDACTED]) on 09-February-2023 at 11:30 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 his absence.

Issues before the Tribunal

6. The landlord is seeking:
 - Vacant possession of rental premises
 - Hearing expenses reimbursed \$20.00

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 and Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy.

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

9. The landlord reviewed the terms of the rental agreement. Their agreement is verbal, the landlord said that the tenant has been living at the apartment for 2 – 3 years. The landlord explained that when he purchased the property 16-September-2021, the tenant was already living there. The landlord stated that the tenant pays \$700.00 in rent and the rental period is from the 1st day of the month until the last. The rent is due in full on the first day of each month. When the landlord purchased the property the tenant's security deposit of \$350.00 was transferred to him and he is still in possession of the deposit.
10. The landlord said that the tenant has sublet one of the rooms in his apartment to another person to help out with the cost of the rental. The tenant is this person's landlord and the landlord provided a copy of the agreement between the tenant and this other individual (LL#04). The landlord accepted that the tenant was struggling to make his rent payments and was in agreement with their arrangement.
11. The tenant's apartment is in a three apartment building. The individual who is renting from the tenant has caused a number of issues around this building and the other occupants have complained to the landlord about the ongoing issues. In addition to the other unit occupants complaining, the tenant complains to the landlord and has requested that he help him have her evicted.
12. The landlord explained that a tenant in another apartment has reached out to him by email (LL#05) on numerous occasions. She has told him that there is a lot of noise and disturbance after 11:00 p.m. Her complaints are as follows:
 - Feb 18 – She reported the tenant for fraud, he had logged into her Rogers account and created a password and was purchasing entertainment. She also complains that the tenant and his guest are drunk and fighting. She said she has contacted the tenant and asked that they be respectful of peaceful hours.
 - Feb 21 – The tenant's guest has smashed something, maybe a bong, she is drunk and out of it
 - Mar 19 – Complaints of noise at night and not being able to sleep
 - Apr 05 – regular fighting and yelling coming from the apartment. This person is now afraid to go around to the side / back entrance
 - Dec 15 – the tenant's guest is getting worse, she is paranoid. There are frequent visits by the mental health team. The police have been there a number of times.

Later that day the tenant's guest is pounding on her door, she is afraid to be in her apartment alone.

- Dec 31 – She said that on Christmas morning the tenant's guest is pounding on her door again. She reports that the police have been there a number of times. She explains she is afraid to be there on her own and that her life is not free from harassment
- Jan 01 – She was awakened by noise from the tenant's apartment again. The police are now coming to her door to ask questions about the tenant's guest 3 – 5 times a week

13. A former tenant from a different apartment texted the landlord with his experience (LL#06). He said that the tenant's guest was very manic, often had the police there, unpleasant to be around and that it was uncomfortable and that they tried to stay away from her.

14. Another tenant contacted the landlord by text (LL#07), she explains that the tenant's guest often had the police there, would come to their apartment looking for cigarettes or asking to come inside to use the phone. She would be difficult to get rid of.

15. The landlord also submitted a text thread (LL#08) between himself and the tenant where the tenant is saying that his guest is not taking her medication. The tenant says he is afraid of his guest and that there are times he stays in his room out of fear. He asks the landlord to help him evict her.

16. The landlord stated that he did try to help the tenant with the eviction of his guest. The tenant started the process and didn't follow through. The landlord said that the issues with the tenant's apartment are impacting everyone in the building and that he has to have him move out for the sake of the other tenants.

17. The landlord submitted a termination notice (LL#03). The notice is on a Landlord's notice to terminate early – cause for interference with peaceful enjoyment and reasonable privacy. The notice is signed and dated for 05-January-2023 with a termination date of 11-January-2023. The landlord said that he served the tenant electronically to both his email and cell number at 12:43 p.m. on 05-January-2023. He is seeking an order of vacant possession.

Analysis

18. 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:

...

2. Obligation of the Tenant - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the **tenant or of a person whom the tenant permits on the residential premises.**

...

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.*

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.

19. I accept the testimony of the landlord and his evidence of texts and emails with the other tenants and the tenant himself. There has been ongoing noise and behaviors requiring a police presence for the past year. It is unacceptable that the tenants in the other apartments are not able to sleep and are frightened in their homes. In accordance with Section 10 of the *Residential Tenancies Act, 2018*, the tenant is responsible for the activities of those whom he permits in his home. Therefore the behavior of the tenant's guest is the responsibility of the tenant.
20. The landlord's termination notice is dated for 05-January-2023 with a termination date of 11-January-2023. The notice was served in accordance with the Act and 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.*
21. I find that the tenant is interfering with the rights of the other tenants who live in the building, I also find 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 11-January-2023.

Decision

22. The landlord's claim for an Order of Vacant Possession succeeds.

Issue 2: Hearing expenses reimbursed \$20.00

23. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#04) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

24. The tenant shall vacate the premises immediately.
25. 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.
26. The tenant shall reimburse the landlord the cost of the hearing expenses \$20.00.
27. The landlord is granted an Order of Possession.

February 27, 2023

Date

[Redacted]
Jacqueline Williams, Adjudicator
Residential Tenancies Office