

Residential Tenancies Tribunal

Application 2023-0049-NL

Decision 23-0049-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:14 a.m. on 20-February-2023.
2. The applicant, [REDACTED], represented by [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 tenant was not present or represented at the hearing and I was unable to reach her by telephone at the start of the hearing. 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 their application stating that they had served the tenant with notice of the hearing, electronically to her email address, [REDACTED], on 24-January-2023 at 2:12 p.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 her absence.

Issues before the Tribunal

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

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

7. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Section 18 Notice of termination of rental agreement and Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy.

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

8. The landlord submitted the monthly rental agreement held with the tenant (LL#02). The tenant took occupancy 18-November-2022, she pays \$720.00 rent a month. Her rental period is from the first day of the month until the last. Rent is due in full on the first day of the month. She is supported by Income Support and a security deposit of \$300.00 was made on 05-December-2023.
9. The landlord submitted two termination notices served to the tenant. The first notice (LL#03) is a Section 18 notice on a Landlord's Notice to Terminate – Standard. It is signed and dated for 16-January-2023 with a termination date of 30-April-2023. The landlord said that this notice was posted to the tenant's door on 16-January-2023 between 2:30 and 3:00 p.m.
10. The second notice is a Section 24 notice (LL#04) on a Landlord's Notice to Terminate Early – Cause. This notice is signed and dated for 16-January-2023 with a termination date of 22-January-2023. The landlord said that this notice was also posted to the tenant's door on 16-January-2023 between 2:30 and 3:00 p.m.
11. The landlord said that there have been ongoing issues with the tenant since she moved in. The tenant lives in an apartment building with other units. Tenants from the other units are being impacted by the tenant and her visitors; they have contacted the landlord with their complaints. The landlord said that they have a system for the tenants to contact them call "Yardi." The landlord provided the "Yardi" complaints (LL#06).
12. The landlord said that the complaints are of excessive noise, especially late into the night and early morning hours. When she received complaints she sent emails to the tenant with letters reminding her of the importance of not impacting the peaceful enjoyment of other people in the apartment building. The complaint and response are as follows:

Complaint (LL#06)	Letter in response (LL#05)
11/24/22 Moved in at 4:00 a.m. making noise woke A Then again noise at 4:30 a.m. a few days later	24-Nov-22 Letter sent
12/05/2022 3:46 awakened by yelling and screaming from the tenant's apartment Night before someone knocking on tenant's door at 3:00 a.m. 12/05/22	05-Dec-22 Letter sent

Tenant had music going 2:30 a.m. Sunday morning	
12/06/22 People coming and going to the tenant's apartment at 11:30 p.m. – concerned drugs are being sold	
12/08/22 Tuesday night 11:45 P.M. yelling from apartment	
01/09/23 Banging on the floor of apartment 11:30 p.m.	12-Jan-23 Letter sent 11-Jan-23 Phone call to tenant
01/14/23 11:45 screaming and things being thrown for 20 minutes Daily there are people banging on outside door demanding tenant let them in	
01/15/23 5:00 am awakened by tenant's apartment 8:00 pm moving furniture 2:30 someone banging on the building door to get in	

13. The landlord said that the building has a main entrance key as well as an apartment key. Each tenant is given 2 sets when they moved into the building. The tenant has people coming and going through the back/side door all hours and either banging on the building door or yelling out to her.
14. The police have been called to the apartment a number of times. The tenant went to Stella's Circle and she was in a state of distress. The landlord was informed that the tenant said that someone had taken over the apartment and the police attended the apartment and arrested a man. There was also another time that she had a guest in her apartment and she was assaulted. When the police attended she was taken to hospital.
15. The landlord said that there was a recent complaint last weekend. When the landlord contacted the tenant, she said that the noise wasn't because of her, but that she knew people would blame her for the noise because of the ongoing issues.
16. The landlord states that the tenant's behavior and the behavior of her guests is interfering with the peaceful enjoyment of the other tenants in the building and she is seeking vacant possession of the apartment.

Analysis

17. 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:

....

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.

18. 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 and evidence of the landlord that the tenant and her guests' behavior is disruptive. It is reasonable to believe that the late night noise, guests arriving at all hours and police presence would interfere with the other tenant's enjoyment of their rental property.
20. I agree with the landlord and find that the tenant's behavior is negatively impacting the other tenants in the building. The landlord's claim for vacant possession succeeds. As this termination notice is dated for an earlier date than the Section 18 notice (LL#03), the validity of the Section 18 notice isn't relevant. The tenant should have vacated the property by 22-January-2023.

Decision

21. The landlord's claim for vacant possession succeeds.

Issue 2: Hearing expenses reimbursed \$20.00

22. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#07) and pursuant to policy 12.01, as her claim has been successful is entitled to reimbursement of that cost from the tenant.

Summary of Decision


23. The landlord's claim for an order for vacant possession succeeds.

The tenant shall:

- Vacate the premises immediately.
- The tenant shall pay to the landlords 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.
- The tenant shall reimburse the landlord \$20.00 for her hearing expenses.

February 28, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office