

Residential Tenancies Tribunal

Application: 2023 No. 70NL

Decision 23-0070-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 23 February 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. He was represented by his property manager, [REDACTED] ("[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*.

Preliminary Matters

6. The landlord called the following witness:
 - [REDACTED] ("[REDACTED]") – resident in apartment above the tenant

Preliminary Matters

7. The tenant was not present or represented at the hearing and there was no available telephone number where she 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 the claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondents fail 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 his application stating the tenant was personally served with the application on 09 February 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

8. The landlord stated that he had entered into a monthly rental agreement with the tenant on 15 December 2022, and a copy of that executed agreement was submitted with his application. The agreed rent is set at \$950.00 per month.
9. The landlord pointed to section 6 of this rental agreement which states: "The Tenant and members of the Tenant's household will not smoke anywhere in the Property no permit any guests or visitors to smoke in the Property". Despite that provision in the agreement, ■■■■■ stated that the tenant had been smoking in the apartment, and as proof of that claim, he pointed to several of his submitted photographs, taken during a visit to the unit, showing cigarette butts, cigarette packages, and crack pipes, which he had found in the unit.
10. The landlord also stated that the smoke from the tenant's cigarettes and crack is entering the upstairs unit, where ■■■■■ resides with her spouse, children and in-laws. She was called as a witness.
11. ■■■■■ stated that she started smelling smoke in her apartment just several days after the tenant moved in, and she claimed that she has asked her to stop smoking in her unit, but she refuses to cooperate. ■■■■■ testified that the smoke from the tenant's unit enters her bathroom and her porch, and on some days her whole apartment smells of stale smoke. She claimed that the smoke is so bad that it burns her eyes and it gives her headaches. She also testified that her father-in-law, who resides with her, has COPD, and the smoke is affecting his health. She also stated that over the past 2 weeks, both her father-in-law and her mother-in-law have become very sick, and the smoke in the unit is hindering their recovery.

12. Besides the issue of smoking, █ also claimed that the tenant is frequently engaged in loud arguments with her boyfriend. She claimed that she can hear loud clanging and banging coming from the unit, as well as a lot of yelling and screaming. █ also stated that on a couple of occasions, she was fearful for the tenant's welfare.
13. █ claimed that her peaceful enjoyment has been significantly affected because of the smoke entering her apartment and because of the loud arguing she can hear coming from the tenant's apartment. She pointed out that she had been living at the unit for 4 years, and since the tenant had moved in, she no longer looks forward to going home at the end of the work day.
14. Because of these complaints, █ issued the tenant a termination notice on 23 December 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 29 December 2022.
15. 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

16. 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.

17. I accept the testimony of the █, and, based on that testimony, I find that the tenant had been smoking in her unit, despite the fact that there is a no-smoking provision in the lease, and despite the requests from the landlord and █ that the tenant cease smoking. But not only is this a breach of the lease, I also find that the smoke is disturbing the █'s enjoyment of her unit and it is exacerbating the health issues of her in-laws, and causing the █ to get headaches.
18. The tenant's continued smoking, combined with the loud arguments heard coming from her unit, are clearly unreasonable, especially given that she is living in such close proximity to █ and her family, and I accept █'s claim that her quiet and peaceful enjoyment has been repeatedly disturbed since December 2022, when the tenant moved in.
19. Accordingly, I am of the view that the landlord was in a position, on 23 December 2022, to issue the tenant a termination notice under this section of the Act.
20. As the notice meets all the requirements set out here, it is a valid notice.

Decision

21. The landlord's claim for an order for vacant possession of the rented premises succeeds
22. 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

23. The landlord paid a fee of \$20.00 to file this application, and he also submitted a receipt showing that he had paid \$25.00 to have his affidavit witness by a commissioner of oaths. As his claim has been successful, the tenant shall pay these hearing expenses.

01 March 2023

Date

John R. Cook
Residential Tenancies Tribunal