

Residential Tenancies Tribunal

Application 2023-0090-NL

Decision 23-0090-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:14 a.m. on 23-March-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 him by telephone at the start of the hearing; his number ([REDACTED]) is not in service. 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 with their application, stating that they had served the tenant with notice of the hearing by prepaid registered mail on 24-February-2023. The tracking number ([REDACTED] [REDACTED]) confirms the package was sent on 24-February-2023, it was not delivered. In accordance with the *Act*, a registered mail package is considered served after 5 days. 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.
5. The landlord called two witnesses to testify:
 - [REDACTED], the Resident Manager for the building: hereinafter referred to as "the landlord's witness1"
 - And [REDACTED], another tenant in the building, hereinafter referred to "the landlord's witness2"

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, 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

9. The landlord stated they have a written monthly rental agreement with the tenant. The tenant took occupancy 01-May-2022, he pays \$860.00 rent a month. His 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. He is supported by Income Support and a security deposit of \$372.00 was made on 12-May-2022; the landlord is still in possession of this deposit.
10. The landlord submitted a termination notice (LL#02) which was served to the tenant. The notice is a Section 24 notice (LL#02) on a Landlord's Notice to Terminate Early – Cause. It is signed and dated for 17-January-2023 with a termination date of 23-January-2023. The landlord said that this notice was served to the tenant, by the Resident Manager, on 17-January-2023.
11. The landlord said that there have been ongoing issues with the tenant. He said that the tenant has been responsible for a number of nuisance behaviors in the building and that they have received a number of complaints from the other tenants who live in the apartment building. The tenant lives in a building with 100 apartments. He explained that he believes there may be a mental health issue affecting the tenant, but they have to consider the people in the other 99 apartments.
12. The landlord gave a brief overview of the complaints that they have received:
 - He took the purse of a tenant who was sleeping in the lobby
 - He knocks on the doors of apartments and walks away
 - He left a urine soaked paper towel on another tenant's door knob
 - They suspect he has been urinating in the elevator
13. The landlord called his first witness, who is the Resident Manager in the building. Landlord's witness1 confirmed that he served the tenant with his termination notice on 17-January-2023.

Landlord's witness1

14. Landlord's witness1 said that on 15-January-2022 he came back to the apartment building after buying groceries. He explained that one of the tenants, who uses a wheelchair and has some underlying health issues was upset and she explained to him that she had fallen asleep in the lobby and someone took her purse. He said he checked the video tape of the lobby and he saw the tenant had been in the lobby, looked at the woman and then took something from next to her left side. He went to the tenant's apartment and the tenant immediately passed out the purse and told him it was just a joke. When Landlord's witness1 gave the purse back to the woman she checked inside and said she didn't think anything was missing, but that the purse had been rummaged through.
15. On 24-January-2023, the landlord's witness1, explained he sent another Killam staff an email, concerning issues with the tenant. He said that at 1:00 am his phone kept going off, indicating that someone was ringing the outside buzzer. When he checked the tape to see who was at the door, it was the tenant. He approached the tenant and asked why he was ringing his buzzer? 15 minutes later the police and ambulance arrived at the building. They had a report that there was a fight between people in two other apartments. They believe that it was the tenant. The response officers determined that this was a prank call and left the building. The landlord's witness1 said that this is something that occurs when he approaches the tenant about an issue; shortly afterward there will be a prank call phoned into the police or ambulance of a made up complaint at the building.
16. There have been complaints of the tenant knocking on the doors of apartments 326, 322, 402, 422, and 417. He also tries their door handle and if the apartment is open he just goes on in.
17. Apartment 403 had the peep-hole removed from the door, the tenant just passed it back to the Landlord's witness1 in pieces.
18. Another unit complained that a urine soaked paper towel was placed on their door knob; again the video tape shows the tenant placing it there.
19. Apartment 422 told the landlord's witness1 that they had to leave their phone turned off for days because the tenant was ringing their buzzer all the time; which sends an alert to their phone.
20. Landlord's witness1 explained that quite often when the tenant has targeted someone he will approach them and say that he noticed what happened and ask them about the occurrence.
21. Landlord's witness1 stated that there is multiple complaints and that the tenant is always targeting the same people. A lot of the activity is occurring after 10:00 or 11:00 at night.

Landlord's witness2

22. Landlord's witness2 lives on the same floor as the tenant. He said he knew the tenant before he moved in and there had been issues in the past. He explained that he and his

wife are happy at the building and want a quiet, more settled life, so he approached the tenant and asked if they could start over. They did and for a while things were okay.

23. One day the tenant showed up at landlord's witness2's apartment looking for a cigarette. He said he didn't have one to give him and from that point on, the tenant has been giving them trouble.
24. He said one day he could hear the tenant walking through the hallways knocking on the doors. The tenant was calling out "open up it's the hatman" and looking for cigarettes. He explained that he went out into the hallway and told the tenant he shouldn't be knocking on strangers doors.
25. Landlord's witness2 said about 5 months ago the tenant was knocking every half hour and went he knew that they weren't answering he started hitting their buzzer, repeatedly all day; which sends an alert to his phone. This continued for a full month. One day the tenant rang his buzzer 47 times. He said that he had to shut his phone off because of the constant ringing; he explained that his children live with his mother and he likes to keep his phone on so that he is reachable.
26. He said he knows it is the tenant because he complained to the Resident Manager and when they checked the video it is the tenant in the video.
27. Landlord's witness2 said that he and his wife have an appointment every morning and leave the building around 10:30 and return at 11:45. While they have been gone the tenant has left a letter with the word "Rat" on his door. He has also urinated on a paper towel and left that on his doorknob. Additionally, he has spit all over his door, the handle and the door seam.
28. He stated that he hated to complain or testify but the tenant is a nuisance and he won't stop. He and his wife are trying to live quietly and the tenant is disturbing their peaceful enjoyment of their property. He has complained to the Resident Manager and has been told that he is not the only one complaining.
29. The landlord states that the tenant's behavior is interfering with the peaceful enjoyment of a lot of the other tenants in the building and he is seeking vacant possession of the apartment.

Analysis

30. 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.

31. 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.
32. I accept the testimony and evidence of the landlord and his witnesses that the tenant's behavior is disruptive. It is reasonable to believe that the nuisance behavior displayed by the tenant would interfere with the other tenant's enjoyment of their rental property.
33. 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. The tenant should have vacated the property by 23-January-2023.

Decision

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

Issue 2: Hearing expenses reimbursed \$20.00

35. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#04) and pursuant to policy 12.01, as the claim has been successful, is entitled to reimbursement of that cost from the tenant. The landlord is authorized to retain \$20.00 of the security deposit to compensate for those expenses.

Summary of Decision

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

The landlord shall retain \$20.00 of the security deposit to compensate for the cost of hearing expenses.

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.

March 27, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office