

Residential Tenancies Tribunal

Application 2023-0117-NL

Decision 23-0117-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 28-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 him by telephone ([REDACTED]) 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 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, electronically to his email address, [REDACTED], on 09-February-2023 at 11:01 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

5. The landlord is seeking:
 - Vacant possession of rental premises

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, 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 written terms of the verbal monthly rental agreement held with the tenant (LL#02). The tenant took occupancy before 2021, on 16-December-2021 the landlord took over management of the property for the homeowner (LL#03). The tenant pays \$975.00 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. The tenant paid a security deposit of \$750.00 and this was transferred to the landlord on 16-December-2021; they are still in possession of the deposit. The tenant is renting an apartment in a four apartment building.

9. The landlord submitted the termination notice (LL#04) they served to the tenant. The notice is a Section 24 notice (LL#04) it is in letter form. The notice includes the tenant's name, address, and the date of the notice and date of termination, as well as, cites Section 24 Interference with Peaceful Enjoyment and Reasonable Privacy as the reason for the notice. It is signed and dated for 16-January-2023 with a termination date of 31-January-2023. The landlord said that this served to the tenant electronically to his email on 16-January-2023 at 9:13 a.m. Confirmation of the service was submitted into evidence (LL#05).

10. The landlord stated that there have been ongoing issues with the tenant she said that there has been issues with him having garbage, tires and cars around the yard. She said that he has been told numerous times to clean up the property. In addition she has repeatedly told him he cannot work on the property. She has received reports of him working on cars at 2:00 a.m. with a spotlight. This activity awakened neighbors and other tenant's in the four-plex. She provided a number of emails (LL#05) of her reporting to the tenant that this is unacceptable and an issue that must be resolved.

11. The landlord explained that she has received a number of complaints of fighting, noise and violence regarding the tenant and his girlfriend, from the other tenants in the four-plex. She said that the other tenants will not testify or provide a witness statement due to their own fears for their safety. She said that one of the tenants just gave his notice because of the issues at the property.

12. The landlord said that there are plumbing issues at the property and that a plumber was sent over to the tenant's property to do some work. The plumber provided a sworn affidavit (LL#06) about his experience that day. In the affidavit the plumber writes that he showed up at the apartment and the tenant told him that it wasn't a good time and he should leave, the tenant had said that his girlfriend was "nuts." When he started to drive away the tenant chased him down and said that the girlfriend had left and he could come in. While there the tenant showed the plumber scars he had where he claimed his girlfriend had assaulted him with a machete. The plumber worked on the plumbing issue for a while and required more supplies, so he left to get them. When he returned the tenant's girlfriend was back. He said that they were screaming, yelling and violent. He

said that they were in between himself and the door. As soon as he was able, he got out through the door, he left his coat and his equipment behind and ran from the unit.

13. The landlord explained that as soon as the plumber left the unit he contacted her. She said he told her what had happened and she asked are you safe now or do you need the police? He asked her to call the police, she said she did. She stated that the police did arrive and that she is not privy to what happened after this. She said that this issue is ongoing, but the plumber was the first witness to be willing to give testimony.
14. The landlord stated that there are still ongoing issues with the plumbing, this is not only the tenant's apartment but also in the other apartments. The issue with the plumbing can't be resolved until someone can go in and fix the problem in the tenant's apartment. The plumber refuses to go back until the tenant has moved because it is unsafe.
15. The landlord states that the tenant's behavior is interfering with the peaceful enjoyment of the other tenants in the building and she is seeking vacant possession of the apartment.

Analysis

16. 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.

17. 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.
18. I accept the testimony and evidence of the landlord that the tenant's behavior is disruptive. It is reasonable to believe that working on a vehicle in the driveway in the middle of the night, or ongoing loud fighting would interfere with the other tenant's enjoyment of their rental property.
19. 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 31-January-2023.

Decision

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

Summary of Decision

21. 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.

February 28, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office