

Residential Tenancies Tribunal

Application 2023-0136-NL

Decision 23-0136-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:17 a.m. and reconvened again at 1:32 p.m. on 21-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" attended by teleconference.
4. The landlord presented six witnesses as follows:
 - [REDACTED], hereinafter referred to as "landlord's witness1"
 - [REDACTED], hereinafter referred to as "landlord's witness2"
 - [REDACTED], hereinafter referred to as "landlord's witness3"
 - [REDACTED], hereinafter referred to as "landlord's witness4"
 - [REDACTED], hereinafter referred to as "landlord's witness5"
 - [REDACTED], hereinafter referred to as "landlord's witness6"
5. The tenant's mother, [REDACTED], attended, hereinafter referred to as the "tenant's witness."
6. The tenant had three support people: [REDACTED], [REDACTED] and [REDACTED]. The tenant requested [REDACTED] be named as his "authorized representative." The applicant agreed to this late request. [REDACTED] will hereinafter be referred to as the "authorized representative."

Preliminary Matters

7. The landlord submitted an affidavit (LL#01) with their application stating that they had paid a process server to serve the tenant with notice of the hearing, on 09-March-2023. The tenant confirmed service.

Issues before the Tribunal

8. The landlord is seeking:
 - Vacant possession of rental premises
 - Hearing expenses reimbursed \$100.00

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
10. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Section 14: Security deposit, and Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy.

Issue 1: Vacant Possession of the Rental Premises

Landlord's Position

11. The landlord submitted the monthly rental agreement held with the tenant (LL#02). The tenant took occupancy 01-November-2021, he pays \$610.00 rent a month. The 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. A security deposit of \$457.50 was made on 04-November-2021 and the landlord is still in possession of this deposit. The tenant is renting in a four story apartment building with 43 units. The tenant lives on the second floor.
12. The landlord submitted a termination notice (LL#03) that they served to the tenant. The notice is a Section 24 notice (LL#03) on a Landlord's Notice to Terminate Early – Cause, cited for interference with peaceful enjoyment and reasonable privacy. It is signed and dated for 03-February-2023 with a termination date of 17-February-2023. The landlord said that the notice was served to the tenant by prepaid registered mail, she provided the tracking information from Canada Post which shows that the notice was delivered to the tenant on 06-February-2023.
13. The landlord said that there have been ongoing issues with the tenant. She revealed that they had attempted a previous termination, however, due to a technical error the notice failed. She explained that there have been ongoing complaints about the behavior of the tenant and that she is confident, that for the benefit of the other tenants, they have to end the rental agreement with this tenant. The landlord presented six witnesses who had previously contacted the landlord with issues related to the tenant.
14. The landlord's witness1 is the building Superintendent. She said that the tenant simply doesn't follow the rules. She said that the building is non-smoking and that the tenant smokes in his apartment and in the non-smoking areas. When she approaches him about this, he tells her smokers have rights. She explained that there is a common area that can be rented by the tenants for gatherings. She said that some of her personal belongings are in that area and that the tenant took a vase that belonged to her; she told him it was hers and he couldn't have it, but he took it anyway. She further explained that in the laundry room there is an area where tenants leave belongings or books that are left for others to take and enjoy. In addition to her issues with the tenant, she said that he impacts the other tenants and she receives complaints. She said other tenants will

not go into the laundry room when the tenant is there, they have told her he is aggressive and they are concerned to be alone with him. Witness1 said that they have a video showing that the tenant taking papers (his and others) off the bulletin board in this laundry room and tearing them up, he then threw a donated item at the trash bin which overturned and made a mess. The landlord explained that the video was too large for our system and it was not submitted into evidence. The landlord's witness1 has also had complaints of the tenant banging and making noise at night and in the early morning hours which disrupts the sleep of others, as well as, complaints of him in the halls wearing only his housecoat and underwear. She stated that when she tries to speak with him he yells at her and slams the door.

15. The landlord's witness2 said that when he first moved into the apartment building the tenant came to his apartment for a cigarette. Witness2 was unable to pinpoint when he moved into the building. During the visit the tenant wanted to smoke in the apartment but witness2 said that he told him they would have to go out on the deck; which they did. He explained that when the tenant left the apartment he returned minutes later and was banging on the door. Witness2 told him to go away or he would call the police. The second time the tenant came over the behavior was the same. He no longer has anything to do with the tenant. He said that other tenants can't even use the laundry room because of their concerns with the tenant.
16. The landlord's witness3 is a friend of the tenant and he lives directly across the hall. He explained that he knows how to deal with the tenant's behaviors. He said that the tenant is a "his way or no way" kind of individual and that you have to be careful what you say to him. He said he has no issues with dealing with the tenant. He confirms that the tenant does negatively impact him, he finds that the smell of smoke coming from the tenant's apartment is as bad as any bar and also confirms that the tenant will come to his apartment and start banging on his door as early as 5:30 a.m. or calling him on the phone which wakes him up.
17. The landlord's witness4 is a recent widow who moved back into the apartment building which she describes as previously quiet. She said about 3 months ago the tenant was out on the street yelling out her name at 7:50 a.m.; he wanted a cigarette. She said she turned around and went back into her apartment. She called the Superintendent and she called the police. She was told by another tenant that he was calling out to her on the street another day, she felt harassed by the tenant. She said his behaviors aren't very nice. The landlord took this opportunity to explain that she knows of 3 calls by tenants, since 14 –February-2023, to the police about the tenant's behavior. The landlord go on to say that she doesn't know the outcome of the police involvement because in her experience the police do not report back this information to them.
18. The landlord's witness5 said she lives next door to the tenant and has had to put a barrier up so that he can't tell if she is out on her deck. She said that the tenant throws stuff over his patio like cds and that she has witnessed him being angry in the hallway. She said one day her door was unlocked and he came into her apartment without being invited because he wanted a smoke; she said he refused to leave. She said he also plays music so loud that everyone can hear it, she said it doesn't bother her in the daytime but it does bother her in the night. She said that the music disrupts her sleep about once a week. In addition to this, she has seen the tenant out in the hall wearing only a housecoat and underwear, she thinks this is inappropriate and that there are children in the apartment building who should not have to see someone like him going around with a housecoat and underwear. She said that the tenant smokes in his

apartment and that she sees the smoke coming out his window. She doesn't understand why everyone else in the building has to go outside to smoke and he thinks he can just smoke in his apartment. She confirms she has called the police when he was yelling out. Witness5 said she is afraid of him and has started sleeping on the couch, she feels she can't continue to live there if she has to be afraid.

19. Landlord's witness6 lives in the building with his wife; he also does maintenance work around the building. He believes that the tenant has no regard and no respect for others. He said he has witnessed the tenant throwing things off his deck i.e. cd's, recycling and garbage. He said that the tenant also threw a chair off the deck. He believes that the tenant showed disregard for the safety of anyone below. The tenant has also thrown things out of his apartment into the hallway. When confronted the tenant denies any wrong doing, he could be standing in front of you smoking and deny that he is smoking. Witness6 said he is a big guy and isn't afraid of the tenant, however others are. He explained that he assisted in the moving of an elderly lady to the other side of the building because she was living in fear. He said that he receives numerous complaints but people are afraid to come forward. He said his wife called the police about the tenant and they didn't even show up. He questions whether the tenant is capable of living on his own and doesn't believe it is fair that they are left to deal with the tenant's ongoing behaviors.
20. The landlord states that the tenant's behavior is interfering with the peaceful enjoyment of the other tenants in the building. She explains that the tenant's behavior is impacting the other tenants and it is not the responsibility of the other tenants and staff to teach the tenant appropriate behavior. Living in a large apartment building is not suitable housing for everyone. She is seeking vacant possession of the apartment.

Tenant's Position

21. The tenant confirmed receipt of the notice of the hearing. He also, with the assistance of his witness confirmed receipt of the termination notice. The tenant was unsure of the date he received the termination notice, however, he could confirm that he went to the post office as soon as he received the card informing him he had a package.
22. The tenant was concerned about the testimony of the landlord's witness1, he said that she was a good person and he believed that they had a good relationship. The Authorized Representative, questioned the weight of the testimonial evidence about the issue with the mess in the laundry room, she said that it should bear less weight as the video wasn't submitted. She also explained that the tenant struggles with social awareness and that this must be considered. She said he may not be aware of social clues and that having a common area in the laundry room where tenants can take objects and another common area where they cannot would be confusing for the tenant.
23. The authorized representative questions the accuracy of witness2 as he was unable to determine when he moved into the apartment building and had issues with his memory.
24. The authorized representative points out that witness3 is the friend of the tenant and states he has no issues and that he knows how to deal with the tenant. She points out that perhaps the issue is that others don't understand the tenant.

25. The authorized representative points out that witness4's is dealing with recent loss and that the tenant is not aware of any charges from the calls to the police.
26. The authorized representative questions why witness5 is afraid and how she knows that the smoke is coming from the tenant's apartment and not the apartment of another smoker. She also expected an explanation as to what the witness meant by "people like him."
27. The authorized representative points out that witness1 and witness6 both work for the apartment building and that there is a power differential that must be considered when weighing the evidence. She also states that many of the witnesses did not realize that the tenant would be present for the hearing and wonders if they would have testified had they known he would have been present.
28. The tenant's witness is his mother, she said that her son is in his 60's and has lived with her most of his life. She said he struggles socially and is overly friendly, he thinks everyone is his friend. She is trying to get him to not smoke in the apartment.
29. The authorized representative believes that due to the tenant's challenges there is discrimination at play. She would like to exhaust all efforts to make this housing arrangement work. With partnerships between the landlords, the tenant's support team, the other tenants and the tenant; she believes that they could create a better understanding of the tenant's barriers and behaviors and that they could still make this housing work.
30. The tenant said he don't believe in anyone or trust anyone except those he believes in.

Analysis

31. 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.***

32. 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.
33. Although the Authorized Representative called into question some of the testimony, there is agreement here, the testimony and evidence of both parties confirm that the

tenant is struggling and is not coping well with his housing arrangement. I acknowledge that securing housing for an individual with complex needs is difficult, however, the landlord is correct in saying that the complexity and consideration required to live in a 43 unit building is beyond the capability of the tenant at this time. I find that this tenant's behavior is disruptive and it is reasonable to believe that he is interfering with the other tenant's enjoyment of their rental property.

34. The termination notice is valid and meets the standard of the Act. The landlord's claim for vacant possession succeeds. The tenant should have vacated the property by 17-February-2023.

Decision

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

Issue 2: Hearing expenses reimbursed \$20.00

36. The landlord submitted the receipts for \$100.00 for the cost of a private process server \$80.00 (LL#01) the application fee for the hearing \$20.00 (LL#05) and pursuant to policy 12.01, as the claim has been successful is entitled to reimbursement of that cost from the tenant. As this claim has been successful, the landlord is authorized to retain \$100.00 of the security deposit (paragraph 11) to compensate for those expenses.

Summary of Decision

37. The landlord shall:

- Be awarded for an order for vacant possession
- Retain \$100.00 from the tenant's security deposit in compensation for hearing expenses incurred

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