

Residential Tenancies Tribunal

Application 2023-0217-NL
2023-0290-NL

Decision 23-0217-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:08 a.m. on 10-April-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent and counter-applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
4. The landlord provided two witnesses, [REDACTED] and [REDACTED], hereinafter referred to as “witness1 and witness2.”

Preliminary Matters

5. The tenant submitted an affidavit stating he served the landlord with notification of the hearing date by prepaid registered mail, he mailed the package on 24-April-2023. The landlord confirms receipt of the notice on 28-April-2023.
6. The landlord served the tenant electronically, with late notice on 31-March-2023. The tenant confirms receipt of notification as stated and waives his right to service.

Issues before the Tribunal

7. The tenant is seeking:
 - Validity of termination notice
 - Hearing expenses reimbursed \$36.88
8. The landlord is seeking:
 - Vacant possession of rental premises
 - Hearing expenses reimbursed \$20.00

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, and Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy.

Issue 1: Validity of termination notice

Issue 2: Vacant Possession of the Rental Premises

Landlord's position

11. The landlord submitted the rental agreement held with the tenant (LL#02). The tenant initially signed a year lease on 01-September-2020 and has renewed each year. His last signing was for 01-September-2022 – 31-August-2023. He pays \$910.00 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 \$437.50 was made on 28-August-2020; the landlord is still in possession of the deposit.
12. The landlord submitted the termination notice (LL#03) served to the tenant. The notice is a Section 24 notice on a Landlord's Notice to Terminate Early – Cause. It is signed and dated for 17-February-2023 with a termination date of 24-February-2023. The landlord said that this served to the tenant by one of the staff. She also submitted a form letter (LL#02), used by their company, the staff indicated on the letter that there was no answer and that he posted the notice to the tenant's door.
13. The landlord said that there have been ongoing issues with the tenant and she called witness2, the building superintendent, to explain his experiences with the tenant. Witness2 stated that on 02-December-2022 there was an argument between the tenant and another tenant from apartment 106. He said that the tenant was in the parking lot and 106 was on their patio and they were arguing back and forth. He said that he told them to stop, they didn't, so he called the RNC.
14. Witness2 said that on 03-February-2023, he sent the landlord a notification of a physical fight in the parking lot between the tenant and 106. Witness2 said that when he came back to the building around 5:30 p.m., the tenant and 106 were physically fighting in the parking lot. The police were called and he said that he was interviewed as a witness.
15. The landlord confirms that they do have video showing the other person, 106, coming out of the building, but she explains that witness2 can only speak to what he saw when he returns to the building and is out in the parking lot. Witness2 did confirm he saw the other person coming down out of the building.
16. The landlord said that they had another incident 15-February-2023, also in the parking lot. The woman from 207 said that the tenant had buried her car in the snow. She complained that he was shoveling the snow into the parking space where her car was parked. The landlord said that they have a picture of him doing this. She points out that in an apartment complex there are a number of parking spots and that none of the spots

are assigned and that if the tenant leaves his spot he cannot expect it to remain open for him to come back. Witness2 said that this is not the only issue with the parking lot for the tenant; he has also had similar issues with 119 and 303.

17. The landlord said that they have received complaints that the tenant is audio recording people in the common areas and hallway. In December of 2022, witness2 said that the tenant spoke with him in the laundry room and that the tenant was showing him that he had audio recorded individuals. He said he couldn't pick out what was being said on the audio recording. The landlord further indicated that this is an ongoing issue and that she believes that this is violating the other tenants right to privacy. She said that the tenants are aware there is videotaping in the apartment common areas but they shouldn't have to be concerned that other tenants are also audio taping them. She explains that this is an ongoing issue. The landlord said that the tenant had approached witness2 in December as well as February with audio tapes. She also confirms that the tenant did bring the audio tapes to a manager, however that manager approached is away at this time, so they can't speak to this meeting.
18. The landlord doesn't deny that there are issues with other tenants, however those issues have nothing to do with the issues with this tenant and they wouldn't discuss those issues with anyone else.
19. 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.

Tenant's position

20. The tenant confirmed the details of his rental agreement. He also confirms service of the termination notice as stated by the landlord.
21. The tenant said that he has had some ongoing issues within the parking lot. For example when he shovels his space in the parking lot, other people will pull into his spot.
22. He further explains that on the day of the incident where there was a physical fight, he said he was shoveling the snow in his parking spot and that the tenant from 106 came down from the 3rd floor and out the side entrance and assaulted him. He said the other person body slammed him. He was injured and is still receiving physical therapy from the assault. He confirms that he was interviewed by the police and that the other person is charged and he is the victim on that file. He said that the landlord should have video of the other tenant coming out of the building after him.
23. The tenant stated that on 15-February-2023 there had been a snow storm and he had shoveled his car out twice to go to work and when he returned another tenant parked in his spot. He then had to shovel another spot and he admits that he did shovel the snow into her parking spot. He believes that no reasonable person would have taken his spot after he cleared his snow. He said he always parks in the same spot.
24. The tenant doesn't deny audio taping people. He said on the Saturday after the assault, from about 9:00 a.m. until lunch time he listened to 109 and 106 while out in the hallway, harass and bully him, he said that they were using racial slurs and saying that "this has been a long time coming." He said that around 10:30 he started taping what they were saying. 45 minutes later he said witness2 came by with a work order and that he

claimed he couldn't hear what was being said. He is frustrated that a staff would come by and deny hearing them bullying him, he believes it is because he doesn't want to "stir the pot." He said that he brought the recording to the building manager so she could hear what was being said. He questions why no one is concerned about his peaceful enjoyment.

25. The tenant also questions why the police weren't called when the tenant who assaulted him assaulted another tenant.
26. The tenant believes that there is a lot of bias and that even when he has shown the staff the audio, nothing is being done. He disputes that he is interfering with others peaceful enjoyment and he believes he is the one who is being discriminated against. He said that he went to work on a Friday morning and after he comes home and has to shovel out his car, while doing this he is assaulted and then he receives an eviction notice. He states "there's something wrong here!"

Analysis

27. 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.

28. 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.
29. When issuing a termination notice for cause, it is incumbent on the landlord to prove that there is cause. Based on the testimony of both parties, I agree that there are ongoing issues at the apartment building and that the incidents described would impact the tenants living at the building. It is not clear that the tenant is the issue.
30. The policy of the apartment building to not assign parking spots is clearly creating tensions amongst the tenants. I accept the tenant states that he always parks in the same spot. I also can appreciate his frustration at having to shovel out a parking space and returning to find someone else's car parked there. That being said, I don't think that taking a cleared spot is unreasonable, most people when looking for parking would take a clear spot, instead of a spot filled with snow. However, it is not appropriate to shovel a

space for your own vehicle by filling in the front of someone else's car. This is not acceptable and the tenant had to know this would cause an issue. This has been presented as a one-time incident born out of frustration and doesn't meet the standard of "ongoing disturbance."

31. Additionally, in relation to the issue of the fighting with the tenant in 106, the landlord has failed to show that this is the fault of the tenant. The tenant's testimony clearly shows that he is the victim in this instance and that he is the subject of harassment and bullying. He is right to question "where is the concern for his peaceful enjoyment?"
32. Finally, the issue of recording individuals in the common areas. In accordance with Section 184 of the Criminal Code of Canada, we follow the one-party consent rule. This means that recording private conversations is legal provided one of the participants consents to the recording. Also, people do have a reasonable expectation of privacy in a private area, but the area where the tenant is recording is the common area and considered a public space. The landlord has shown concern for the privacy of the persons being recorded, however the tenant's testimony shows that he is recording his own abuse at the hands of other tenants. The testimony of both parties show that he has used this information to show the landlord that he is being victimized in an attempt to defend himself.
33. The testimony of both parties tell a story of the tenant being victimized by others in the apartment building. He is yelled at, subject to racial slurs, he has been assaulted and potentially, even the issue of people parking in his parking spot, could be tied to this bullying.
34. It is the burden of the applicant to show that the tenant is interfering with the rights of the other people in the building. The landlord has not proven that this tenant has violated the rights of other tenants, in fact, they have shown that he is the victim and his attempts to show this to the staff have gone unanswered.
35. The landlord's claim fails, the Section 24 notice issued to the tenant is without merit and therefore not valid.

Decision

36. The landlord's claim for vacant possession fails, the Section 24 notice issued to the tenant is not valid.

Issue 3: Hearing expenses reimbursed

37. Both the landlord and tenant submitted their receipts for the cost of the hearing. The tenant's claim has been successful and pursuant to policy 12.01, is entitled to reimbursement of those costs from the landlord. He submitted the receipts for \$20.00 for the cost of the application fee (LL#04) and \$16.88 for the cost of Canada Post (LL#03). The landlord shall reimburse the tenant \$36.88 for these expenses.

Summary of Decision

38. The landlord's claim for an order for vacant possession fails.

The landlord shall reimburse the tenant \$36.88 for his hearing expenses.

April 14, 2023

Date



Jacqueline Williams, Adjudicator
Residential Tenancies Office