

Residential Tenancies Tribunal

Application: 2023 No. 232NL

Decision 23-0232-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:08 AM on 17 March 2023 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". [REDACTED] (" [REDACTED]"), the landlord's maintenance supervisor, and [REDACTED], the landlord's customer service agent, were also in attendance.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", was represented at the hearing by his mother, [REDACTED] (" [REDACTED]").

Issues before the Tribunal

4. The landlord is seeking an order for vacant possession of the rented premises.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case are sections 10 and 24 of the *Residential Tenancies Act, 2018*.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

7. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant on 01 March 2023, and a copy of that executed lease was submitted with her application. The agreed rent is set at \$895.00 per month, and it is acknowledged in the agreement that the tenant had paid a security deposit of \$671.25.
8. The rental unit is an apartment in a 7-floor residential complex, containing 96 other apartments.
9. With her application, the landlord submitted affidavits from a resident at the complex, ■■■, who resides in unit 404, and from her contractor, ■■■.
10. According to ■■■'s affidavit, she writes that she was physically threatened by the tenant on 2 different occasions. She reported that on 12 March 2023, as she was walking through the lobby of the complex, she came upon the tenant and he was yelling and screaming at people as they walked past. When she returned 2 hours later, she approached the tenant had asked if he was ok. She writes that the tenant became aggressive with her, that he was screaming at her, and he had put lit cigarette in her face, about an inch from her eye. A little while later, the tenant again accosted ■■■ and was again aggressive with her, yelling, and she reports that he had his fists raised. Because of these interactions, the ■■■ called 911 and a case file was opened concerning that incident.
11. On the following day, 13 March 2023, when she was walking to her car with her husband, the tenant came out on his balcony and was yelling and screaming at the ■■■, and called her a "ratbag", among others things.
12. ■■■ writes that she no longer feels safe in the complex, and she has had to resort to having her husband escort her to and from the parking lot. She also writes that she is worried for the safety of the other residents in the complex.
13. With respect to ■■■'s affidavit, he also writes that on 12 March 2023 he was confronted by the tenant and that he had been yelling at him. As he made his way to his vehicle, the tenant stated that he could "split" ■■■ open, and that he knew how to hit ■■■ between the eyes to kill him. ■■■ also writes that the tenant challenged him to meet him at the front entrance of the complex, and he threatened to split ■■■ open.
14. The landlord stated that after she had received these reports from ■■■ and ■■■, she visited the unit with ■■■, and the police were also in attendance. She testified that the tenant was acting erratic, and she witnessed the tenant yelling at ■■■,

calling him a drug addict and “coke head”. After the tenant went back to his apartment, she was escorted there by the police to serve him with the termination notice. She stated that the police constable entered the apartment and the tenant was very confrontational, and was still yelling and cursing. She stated that he refused to accept the termination notice, and after his door was closed, she slipped it under it. She testified that the tenant continued to yell and scream in his apartment and she could hear things being banged around inside. The landlord pointed out that she would never tolerate that sort of noise in these apartments, but she claimed that she was too afraid to knock on the tenant’s door to ask him to be quiet.

15. The landlord stated that because of the complaints she had received from the residents of the complex about the behaviour of the tenant, and because he had threatened to kill one of her contractors, she has had to hire a security company to monitor the complex during the nights and weekends, at a cost of \$190.00 per day. She stated that this is an expense that her company cannot afford, and it is the direct consequence of the tenant’s erratic and threatening behaviour.
16. Because of these complaints, just recounted, the landlord issued the tenant a termination notice on 13 March 2023, as described in paragraph 14, and a copy of that notice was submitted with her application. That notice was issued under section 24 of the *Residential Tenancies Act, 2018*, and it had an effective termination date of 20 March 2023.
17. The landlord is seeking an order for vacant possession of the rented premises.

█’s Position

18. █ confirmed that the tenant had received that termination notice on 13 March 2023.
19. With respect to the submitted affidavits, █ did not contest those reports, and she acknowledged that the tenant was probably acting as reported. At the hearing, █ apologized for the tenant’s behaviour, but she pointed out that he had never before harmed anyone. She testified that the tenant suffers from mental health issues, and she claimed that the tenant’s behaviour will improve with an adjustment to his medications.

Analysis

20. 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.


21. I accept the testimony of the landlord, and I also accept the statements provided by ■■■ and ■■■. Based on that testimony and those affidavits, I find that the tenant had been yelling and screaming in the common areas at the complex and in his rental unit. I also find that he had been making threats towards some of the other residents at the complex and towards the landlord's contractor.
22. That sort of behaviour is clearly unreasonable and antisocial, especially considering that the tenant is living in a large residential complex. I also accept the claims of both the landlord and ■■■ that they are fearful of the tenant, and I conclude that the tenant had therefore breached his covenant of peaceful enjoyment.
23. Accordingly, I am of the view that the landlord was in a position, on 13 March 2023, to issue the tenant a termination notice under this section of the Act.
24. As the notice meets all the requirements set out here, it is a valid notice.

Decision

25. The landlord's claim for an order for vacant possession of the rented premises succeeds.
26. 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.

22 March 2023

Date


John R. Cook
Residential Tenancies Tribunal