

Residential Tenancies Tribunal

Application: 2023 No. 299NL

Decision 23-0299-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:04 AM on 11 July 2023 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED] hereinafter referred to as “the landlord”. The tenant, [REDACTED] hereinafter referred to as “the tenant”, was not in attendance.

Issues before the Tribunal

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

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 10, 24, 42, and 46 of the *Residential Tenancies Act, 2018*, rule 29 of the *Rules of the Supreme Court, 1986*, and David Mullin’s Administrative Law, 3rd ed. (Carswell, 1996).

Preliminary Matters

6. The tenant was not present or represented at the hearing. I was able to reach him by telephone at the commencement of the hearing, but he hung up. 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 the 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 her application stating that she had sent the application to tenant, by registered mail, on 13 June 2023. Although the associated tracking history shows that that mail was not collected by the tenant, according to section 42.(6) of the Residential Tenancies Act, 2018, it is nevertheless considered to have been served on the 5th day after mailing—in this case, 18 June 2023. 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.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

7. The landlord stated that the tenant moved into the rental unit approximately 5 years ago. In January 2023, that property was sold, and her company was hired to manage that property, commencing 06 January 2023. The current rent is set at \$900.00 per month, and the landlord stated that the tenant had paid a security deposit of \$675.00 when he had initially moved in.
8. The landlord stated that since she had taken over management of the property, she has received multiple complaints from [REDACTED] the resident of the upstairs apartment. The landlord stated that the tenant has allowed [REDACTED] to move in with him, and since [REDACTED] has moved in, she has had several run-ins with [REDACTED] and the police had to be called on several occasions.
9. The landlord stated that [REDACTED] has been complaining that there is a lot of loud noise coming from the tenant's unit, and that she can hear him banging on the ceiling. The landlord also reported that [REDACTED] had told her that there are frequently loud parties held in the tenant's unit, and the noise from these parties has been keeping her toddler awake.
10. The landlord also stated that [REDACTED] and [REDACTED] got into an altercation a few weeks ago while [REDACTED] was carrying out some lawn maintenance. As a result, [REDACTED] had called the police. And the landlord stated that [REDACTED] has also had to call the police on several occasions because she has had concerns about [REDACTED] taking place in the tenant's apartment.
11. Because of these complaints, the landlord issued the tenant a termination notice on 31 March 2023, 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 06 April 2023. The tenant has not moved out, as required, and the landlord is seeking an order for vacant possession of the rented premises.

Analysis

12. 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.*

13. Although I accept the landlord's claim that she had been receiving complaints from [REDACTED] about the tenant's behaviour and the behaviour of [REDACTED] I find that she had not presented enough credible evidence which would lead me to conclude that those complaints are warranted.

14. No witnesses were called at the hearing to give any first-hand testimony about what had been taking place at the tenant's unit, and the only evidence submitted by the landlord at the hearing were her statements about what [REDACTED] had told her. That is, the only evidence presented at this hearing concerning the tenant's behaviour was hearsay evidence.
15. Although this Tribunal is not bound by the rules of evidence found in our courts (cf. s. 46.(2)(c) of the *Residential Tenancies Act, 2018*), it would be unfair and a violation of the principles of natural justice to evict the tenant based on these unfounded complaints alone. As David J. Mullan states in Administrative Law:
- §163 Even though it is not bound by the strict rules of evidence, a tribunal may only act upon legally cogent evidence. Although an administrative tribunal may admit hearsay evidence, basing a finding which has serious consequences exclusively on hearsay and opinion evidence may still amount to a denial of natural justice or procedural fairness.*
16. For this reason, the landlord's claim does not succeed.

Decision

17. The termination notice issued to the tenant on 31 March 2023 is not a valid notice.
18. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

17 July 2023

Date

[REDACTED]
John R. Cook
Residential Tenancies Tribunal