

Residential Tenancies Tribunal

Application: 2023 No. 412NL

Decision 23-0412-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:08 AM on 05 June 2023 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord", participated in the hearing. The respondent [REDACTED] hereinafter referred to as "the tenant", was also 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, 19 and 24 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

6. The tenant had filed his own application (2023 No. 357NL) with this Section through which he sought a determination of the validity of a termination notice which had been issued to him. That application was scheduled to be heard at the same time as the landlord's. However, as the tenant had not served the landlord with his application prior to the hearing, it was dismissed.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

7. The landlord stated that she had entered into a monthly rental agreement with [REDACTED] approximately 4 years ago. In November 2022, [REDACTED] sought permission to have the tenant move in with her, and, on 01 November 2022, a new rental agreement was drafted with both of their names added. A copy of that agreement was submitted with the landlord's application. The agreement rent was set at \$950.00 per month, due in installments of \$475.00 on the 1st and 15th of each month.
8. The rental unit is a basement apartment, and the landlord resides in the apartment directly above the tenant.
9. With his application, the tenant submitted a copy of a termination notice which the landlord had stated she had issued to the tenant on 27 March 2023. That notice was issued under section 19 (notice where failure to pay rent) and section 24 (notice where tenant contravenes peaceful enjoyment and reasonable privacy) of the *Residential Tenancies Act, 2018*, and it had an effective termination date of 07 April 2023.
10. With respect to the issue of rent, the landlord complained that since the tenant moved in, he was frequently late paying his rent. When the notice was issued on 27 March 2023, the landlord claimed that the tenant was \$20.00 short on the installment of rent that was owing for 15 March 2023. The landlord received that \$20.00 on 01 April 2023, along with the installment that was owing that day.
11. Regarding the issue of peaceful enjoyment, the landlord complained that on 27 March 2023, the day the notice was issued, the tenant had gotten into a heated argument with [REDACTED]. She testified that she could hear them arguing about money, and [REDACTED] was looking to have the tenant move out. She also stated that during this argument she could hear doors slamming and banging, and she feared that her pictures would fall off of her wall.
12. The landlord claimed that this was not the first time she was able to hear the tenant arguing with [REDACTED] and she claimed that she had to send text-messages to them on several occasions to remind them to keep quiet. She also testified that there had also been other occasions when she was able to hear doors banging in the apartment. The landlord argued that this noise and constant fighting was a disturbance to her daily life.
13. The landlord also complained that the tenant's constant failure to pay his rent on time had also been adding additional stress to her life, which in turn, she argued, is also interfering with her peaceful enjoyment.

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

The Tenant's Position

15. With respect to the rent, the tenant acknowledged that he was \$20.00 short on the second installment of rent for March 2023. He reiterated the landlord's statement that that \$20.00 was paid to the landlord on 01 April 2023 when he paid his first installment for April's rent.
16. With respect to the landlord's complaints about the noise coming from his apartment, the tenant acknowledged that, on 27 March 2023, [REDACTED] had been banging on his bedroom door and had been yelling at him. He claimed, however, that this altercation had nothing to do with money, but rather with the fact that [REDACTED] was upset that he had allowed his girlfriend to stay over at the apartment. The tenant denied that he was responsible for any of the noise or the shouting on that day, and placed all the blame on [REDACTED]
17. Regarding the noise of slamming doors, the tenant claimed that the entrance door to the apartment was broken and that the only way it would close was if it were slammed shut. He also claimed that if there was any other noise disturbing the landlord, it should be attributed to [REDACTED]

Analysis

18. With respect to the issue of rent, section 19 of the *Residential Tenancies Act, 2018* states:

Notice where failure to pay rent

19. (1) *Notwithstanding subsection 18(2) and paragraph 18(3)(b),*

...

(b) where the residential premises is

- (i) rented from month to month,*
- (ii) rented for a fixed term, or*
- (iii) a site for a mobile home, and*

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

- (2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the*

date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

19. It is not disputed that, on 27 March 2023, the tenant was in arrears in the amount of \$20.00. On 01 April 2023, the first installment of rent for that month, \$475.00, came due, bringing the total amount owing to \$495.00. According to the landlord and the tenant, that amount was paid on that date, bringing the balance to zero. As the tenant had paid off all of the rent owing prior to 15 April 2023, the termination date set out in the termination notice, the rental agreement cannot be terminated on these grounds.
20. With respect to the issue of peaceful enjoyment, 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.

and 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 landlord's testimony that she can hear frequent fighting in the tenant's apartment and the sound of doors slamming. The tenant acknowledged that an altercation took place on 27 March 2023, and based on the landlord's testimony, which I found to be credible, I find it probable that this was an ongoing issue, and that the relationship between tenant and [REDACTED] was strained.

22. I also find that the sort of behaviour described by the landlord is unreasonable, given that the landlord lives directly above the tenant, and I accept the landlord's claim that this behaviour had been interfering with her quiet and peaceful enjoyment of her home. Accordingly, I am of the view that the landlord was in a position, on 27 March 2023, to issue the tenant a termination notice under this particular section of the Act.

23. As the notice was properly served, and as it meets the requirements set out in section 24 of the Act, it is a valid notice.

Decision

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

25. 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.

Issue 2: Hearing Expenses

26. The landlord paid a fee of \$20.00 to file this application. As her claim has been successful, the tenant shall pay this hearing expense.

09 June 2023

Date

[REDACTED]
John R. Cook
Residential Tenancies Tribunal