

Residential Tenancies Tribunal

Application 2023-0446-NL

Decision 23-0446-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 11:00 a.m. on 20-June-2023. The hearing was held in person at the board room, [REDACTED]
2. The applicant, [REDACTED] hereinafter referred to as "the landlord", participated in the hearing. The respondent, [REDACTED] hereinafter referred to as "the tenant", participated in the hearing with her authorized representative [REDACTED]
3. [REDACTED] (witness 1) was called as a witness for the applicant

Preliminary Matters

4. The rental unit is the basement apartment of a single family home with additional tenants in the upstairs unit. There is a written month to month rental agreement that commenced on 1-September -2021 (LL#1). The tenant moved into the premises under a different landlord on 14-September -2018. Rent is \$600.00 per month and is paid on the first of each month. A security deposit of \$450.00 was paid in 2018 before the current landlord took over the property. The security deposit is in the possession of the current landlord.
5. The landlord submitted an affidavit stating she served the tenant with the notice of hearing on 16-May-2023 via electronically by emailing it to the following address; [REDACTED] The tenant confirmed receiving it on that day. This is good service.

Issues before the Tribunal

6. The landlord is seeking:
 - Vacant possession of rental premises

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

8. 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: Vacant Possession of the Rental Premises

Relevant Submissions

9. The landlord submitted a copy of a termination notice issued to the tenant on a *Landlord's Notice to Terminate Early – Cause* form (LL#3). It was dated for 8-May-2023 under section 24; Notice where tenant contravenes peaceful enjoyment and reasonable privacy to vacate the premises by 15-May-2023.

Landlord's Position

10. The landlord's representative stated that she has received several complaints from the other tenants who reside in the upstairs unit of the house. She states that there is continuous screaming, banging and curse words directed towards the other tenants. The landlord's representative states that there are 2 young children who live upstairs and they are scared when the banging on the downstairs ceiling starts and the yelling of profanity. The landlord's representative states that one of the upstairs tenants tried to have a conversation with the respondent only to have her spit in or towards her face.
11. The landlord's representative stated that the respondent's behavior has scared not only the children but the adults as well, she stated that the family will not have guests in their home and they try to stay away from the house as much as possible to avoid any type of confrontation. The landlord's representative feels that such continuous outbursts from the tenant is interfering with the daily lives of the other tenants and violating their rights to move around freely within their own home.
12. The landlord called witness 1 into the hearing to provide confirmation as to what has been happening and to provide dates and times to collaborate her allegations. Witness 1 confirmed that they are a working family of 2 with 2 small children who go to daycare during the day. They are basically only there early morning and return in the evening. The kids go to bed early and have many activities on the weekends. He accepts that the children run around and play within the confines of the home, which he stated is normal behavior for young children. Witness 1 testified that his children are now scared to run or jump or speak loudly as they do not want to aggravate the tenant below. Witness 1 stated that things started to get heated on 22-March-2023 and has been continuous ever since. Witness 1 testified that on 3-April-2023, the family were getting breakfast when the tenant starting screaming and banging which continued for an hour. He stated that he fears for his families well-being and don't feel safe in his own home. He stated that on 6-March-2023, when he walked in his home, his daughter ran towards him to greet him and this ignited 2 hours of screaming from below.

Tenant's Position:

13. The tenant did not dispute her behaviour but rather provided testimony to try to make everyone involved understand the reasons for her actions. [REDACTED] She stated the she is a very quiet and reserved person. She stated that she worked from home and recently lost her job due to her inability to concentrate due to the continuous noise of the children upstairs.

14. The tenant submitted video evidence to support her claim that the noise from the tenants upstairs is too loud for her to handle (TT#1).

Analysis

15. The relevant subsections of section 10 of the *Residential Tenancies Act, 2018* state:

- i. **Statutory conditions**
- ii.
- iii. **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.*

16. The notice was served under Section 24 of the *Residential Tenancies Act, 2018*, which states:

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.*

17. The tenant was given a termination notice on 8-May-2023 to vacate the premises on 15-May-2023. This meets the timeline of "not less than 5 days after the notice has been served" as set out in section 24 of the Act. The termination notice meets the requirements of the Act and is a valid notice.

18. I accept the tenant's testimony that the children make noise and I listened to part of a video that was accepted in evidence (TT#1) which was videotaped on 19-June-2023. I could hear the sound of people walking above, most likely on a stairs but the noise was nothing out of the ordinary. There was a muffling sound in the video which could be the sound of the HVAC running in the background.

19. I questioned the tenant as to how the noise from the children could impact her ability to work during the day when the kids are not there during those hours. [REDACTED]

[REDACTED] I accept that the tenant legitimately cannot function with the sounds of surrounding noises but the noise as presented in the video is, in my opinion, what one would consider normal noise for a family of 4.

20. I accept the landlord's claim that the peaceful enjoyment of the tenant's in the upstairs unit is continuously been interfered with and their rights as tenants have been violated. I find that the tenant did not meet her obligations as set out in the *Act* under sections 10 and 24.

21. I find that the tenant should have vacated the unit on 15-May-2023

Decision

22. The landlords claim for vacant possession succeeds.

Summary of Decision:

23. The termination notice issued on 8-May-2023 under section 24 of the Act is a valid notice.

24. The tenant shall vacate the premises immediately.

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.

26. The landlord will be awarded an Order of Possession.

June 30, 2023

Date

[REDACTED]
Pamela Pennell, Adjudicator
Residential Tenancies Office