

Residential Tenancies Tribunal

Application 2023-0470-NL

Decision 23-0470-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:36 p.m. on 27-June-2023.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant" attended by teleconference.

Preliminary Matters

4. The landlord presented a witness, [REDACTED] hereinafter referred to as "landlord's witness1."
5. The landlord was out of the Country so she submitted an authorized representative form for her son [REDACTED] (LL#01), to represent her in the event she lost connection to the teleconference. He is referred to as "landlord's witness2."
6. The tenant presented a witness, hereinafter referred to as "the tenant's witness."
7. The landlord submitted an affidavit (LL#02) stating that the landlord's witness1 served the tenant with notification of the hearing personally on 25-May-2023. The landlord's witness1 confirmed that she went to the basement apartment door and a man came out, she asked him "are you the person who lives here?" She said he said he lived there. The landlord stated that she was there and overheard her witness confirm with the person that he was the person who lived there. The landlord said that she saw the tenant that day at the residence. The tenant stated that [REDACTED] at this time and was not properly served. The tenant's witness stated that he was the person who answered the door and took the notice. He said he told the landlord's witness1 that he was the roommate. I determined that as the service was given to an individual who is over the age of 16 and apparently lives with the tenant; that this is good service and therefore the hearing proceeded.

Issues before the Tribunal

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

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, Section 18 Notice of termination of rental agreement and Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy.

Issue 1: Vacant Possession of the Rental Premises

Landlord's Position

11. The landlord stated that she entered a term rental agreement with the tenant beginning 01-December-2022 and commencing 31-December-2023. Initially there were two people on the agreement however, the other tenant moved out and her agreement was amended is currently only with the tenant named in the application. The landlord said that the monthly rent is \$900.00 with utilities included; rent is due the first day of each month. The tenant paid a security deposit of \$450.00 on 08-December-2022 and the landlord confirms she is still in possession of the deposit.
12. The landlord stated that she currently only receives \$450.00 each month for rent since the other tenant moved out. She said that she has not made an issue of the rent, because she works on rotation and was more interested in having tenants at the property, so that the place was not sitting empty when she is away for work.
13. The landlord served a termination notice (LL#04) to the tenant. The notice is a Section 22 and Section 24 notice (LL#04) on a Landlord's Notice to Terminate Early – Cause. It is signed and dated for 02-May-2023 with a termination date of 08-May-2023. The landlord said that this notice was served to the tenant electronically to both his email and phone, also served by taping the notice to the tenant's apartment window on 02-May-2023. Picture provided showing the notice taped to window (LL#06).
14. The landlord said that there have been ongoing issues with the tenant. She explained that there is loud noise, fighting, screaming and windows being broken coming from the apartment.
15. She states that the apartment is non-smoking and no pets. She says that there have been issues with smoking and that there is a large [REDACTED] who has been living at the apartment for the past few months.

16. The landlord stated that she has called the police to respond to the apartment four times since 26-April-2023 and her son has called twice. She provided an information request (LL#05) from the R.N.C. showing that they attended on 26-April-2023 & 01-May-2023.
17. [REDACTED] landlord's witness2, stated that he is frightened when there alone, he usually keeps his bedroom door open so that he can hear if someone enters their part of the house. He confirms that he has called the police. He said one time when he called they arrived knocked on the tenant's door and left a minute later. He said they didn't even speak with him before leaving. He believes that they are frustrated by being called to the apartment so often. He confirms that there is a smell of cigarettes. He doesn't think this is a good environment for his younger siblings.
18. The landlord needed to access the apartment and was advised by the R.N.C. to request an escort before entering the apartment because of the large dog. She explained she needed access to the power box to switch off the power. When doing this she could see that there were holes in the walls and some of the doors were missing the handles.
19. The landlord states that the tenant's behavior is interfering with the peaceful enjoyment of her family and she is seeking vacant possession of the apartment.
20. The landlord also gave the notice for "Failure to keep the premises clean and repair damage," she believes that there is damage to the property however she has been unable to assess this because of the dog. She has provided pictures of dog poop (LL#07) and garbage bags (LL#08). The landlord acknowledges that she didn't follow the steps required for this part of the notice.
21. The landlord believes that the situation is unsafe for her and her children, she is seeking an order of vacant possession.

Tenant's Position

22. The tenant disputes the rental agreement as stated by the landlord; he said that he didn't move in to the property until 16-December-2023 and that he believes that the landlord still receives the full rent from [REDACTED]
23. The tenant disputes that he was served notice of the termination. He explains that he was in hospital at that time and that he never received the notice. He said that he told the landlord he was in hospital and that she could serve him after he got out.
24. The tenant stated that tenant's witness was staying with him for a while.
25. The tenant disputes that there has been issues, he said he was home for one of the events and disagrees that the landlord's witness2 called the police, the tenant said he called the police.
26. The tenant states he is a great tenant and he keeps the area clean and takes out the garbage. He said he is looking out for everyone's property.

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:

....

2. Obligation of the Tenant - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

....

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. I acknowledge that the tenant may not always be present for the ongoing issues at his apartment. He stated he was [REDACTED] during some of this time period. However the Act states that the tenant is not only responsible for his own behavior, he is also responsible for the wilful or negligent act of a person he permits on the property.
30. I accept the testimony and evidence of the landlord that the tenant's behavior is disruptive. It is reasonable to believe that the late night noise and police presence would interfere with the landlord's family's enjoyment of their property. As well as the ongoing violations of the rental agreement concerning smoking and pets.
31. In response to the tenant's claim that he wasn't served because he was in hospital, as shown in Section 33, of the *Residential Tenancies Act, 2018*, the tenant is considered served as the landlord served the notice both by posting it to his door and sending it electronically.

Service of documents

35. (2) A notice or other document under this Act other than an application under section 42 shall be served by a landlord on a tenant by

(a) giving it personally to the tenant;

(b) giving it to a person 16 years of age or older who apparently lives with the tenant;

- (c) posting it in a conspicuous place on the tenant's residential premises;*
- (d) placing it in the tenant's mailbox or under a door in the tenant's residential premises;*
- (e) sending it to the tenant by prepaid registered mail or prepaid express post at an address
 - (i) provided by the tenant, or*
 - (ii) where the tenant carries on business;**
- (f) sending it electronically where
 - (i) it is provided in the same or substantially the same form as the written notice or document,*
 - (ii) the tenant has provided an electronic address for receipt of documents, and*
 - (iii) it is sent to that electronic address; or**
- (g) sending it to the tenant by courier service at an address set out in paragraph (e).*

...

32. The landlord's claim for vacant possession succeeds. The tenant should have vacated the property by 08-May-2023.

Decision

33. The landlord's claim for vacant possession succeeds.

Summary of Decision

34. The landlord's claim for an order for vacant possession succeeds.

The tenant shall:

- Vacate the premises immediately.
- The tenant shall pay to the landlords 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.

July 05, 2023

Date


Residential Tenancies Office