



Residential Tenancies Tribunal

Application 2023-0485-NL

Decision 23-0485-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:19 a.m. on 20-July-2023.
2. The applicants, [REDACTED] hereinafter referred to as "landlord1 and landlord2" attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant" did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing, she called in and was having issues with her phone. I was unable to reach her by telephone at the start of the hearing [REDACTED] and the landlord also attempted contact. 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 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 she has been properly served. This is a rescheduled hearing and both parties were notified by our office. The tenant was notified by prepaid registered mail [REDACTED] sent 11-July-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 her absence.

Issues before the Tribunal

5. The landlord is seeking:
 - Vacant possession of rental premises
 - Hearing expenses reimbursed \$155.00

Legislation and Policy

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

7. 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

Relevant Submissions

8. The landlords submitted the monthly rental agreement held with the tenant (LL#02). The tenant took occupancy 05-February-2023, she pays \$900.00 rent a month. Her rental period is from the first day of the month until the last. Rent is due in full on the first day of the month. She paid a security deposit of \$450.00 on 05-February-2023; the landlords are still in possession of the deposit.
9. The landlords submitted two termination notices (LL#03 and LL#04). The first notice (LL#03) is a Section 18 notice signed and dated for 30-May-2023 with a termination date of 31-August-2023. They then served the second notice (LL#04) to the tenant. The notice is a Section 24 notice on a Landlord's Notice to Terminate Early – Cause. It is signed and dated for 15-June-2023 with a termination date of 22-June-2023. The landlord said that this served to the tenant by posting it to her door.
10. Landlord1 said that there have been ongoing issues with the tenant. She explained that the tenant lives in a three apartment house. When the tenant first moved in, the tenants from the other apartments contacted her with complaints. Initially, she tried to give the new tenant the benefit of the doubt and believed it was just a settling in process. The other two renters are good tenants, and had not complained in the past. It became evident that the issues with the new tenant were not settling.
11. The landlords submitted a sworn affidavit and ongoing emails from the two other renters. The other downstairs renter (LL#05) stated there has been ongoing noise and the tenant stays up late at night, showering and doing laundry. This noise has caused her to have to sleep on her couch because her bedroom is next to the tenant's laundry area.
12. She goes on to state that the police have been contacted a number of times. There have been men in the apartment and the other renters have heard banging, yelling and screaming. The downstairs renter called the police because she was afraid for the tenant's safety.
13. The downstairs tenant reported to the landlord that she was in her house sleeping and two men entered her apartment. Her dog scared them off. She said that the men then ran into the tenant's apartment. She went out to confront them and inquire why they came to her apartment. No one would answer the door. She wrote down their license number and contacted the police. She said that they then took off.
14. She said that she doesn't feel safe in her apartment and is going to move.

3

15. The upstairs renter has already moved out due to feeling unsafe, she has made complaints to the landlord of noise and smoking. She provided a sworn affidavit (LL#06).
16. Landlord1 states that a neighbor knows the men who have been frequenting the tenant's apartment and he states that they are not good people. Landlord1 said that they have new renters in the upstairs apartment but have concerns that they too might decide to leave. She said that they have been landlords for a long time and have never encountered an issue like this.
17. Landlord2 said that it is his belief that the tenant is responsible for her guests, she however does not.
18. The landlords state that the tenant's behavior is interfering with the peaceful enjoyment of the other tenants in the building and she is seeking vacant possession of the apartment.

Analysis

19. 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:

....

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.

20. 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.
21. I accept the testimony and evidence of the landlords as well as the sworn statements of the other renters in the house, that the tenant's behavior is disruptive. It is reasonable to believe that the late night noise, guests arriving at all hours and police presence would interfere with the other tenant's enjoyment of their rental property.
22. I agree with the landlord and find that the tenant's behavior is negatively impacting the other tenants in the building and I accept that the other tenants do not feel safe. The landlords' claim for vacant possession succeeds. The tenant should have vacated the property by 22-June-2023.

23. There is no requirement to assess the Section 18 notice as the Section 24 notice is valid and supersedes the first.⁴

Decision

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

Issue 2: Hearing expenses reimbursed \$155.00

25. The landlord submitted the receipts for \$20.00 for the cost of the hearing and \$135.00 to have the testimony of the two witnesses sworn (LL#07) and pursuant to policy 12.01, as their claim has been successful is entitled to reimbursement of those costs from the tenant.

Summary of Decision

26. 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.
- The tenant shall reimburse the landlord \$155.00.00 for her hearing expenses.

July 26, 2023

Date

