

Residential Tenancies Tribunal

Application: 2023 No. 540NL

Decision 23-0540-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:10 AM on 06 July 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. [REDACTED], hereinafter referred to as "the tenant", was also in attendance. She was represented by [REDACTED]
[REDACTED]

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 and 24 of the *Residential Tenancies Act, 2018*.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

6. The landlord stated that he had entered into a verbal rental agreement with the tenant on 20 December 2021. The agreed monthly rent is set at \$725.00 and the

landlord stated that the tenant had paid a \$350.00 security deposit when she moved in.

7. The residential complex contains 4 apartments—3 of the apartments, including the tenant's, are on the ground floor and the 4th is on the second floor.
8. The landlord stated that he had been receiving complaints about the tenant from [REDACTED] the resident on the second floor.
9. According to landlord, [REDACTED] has been complaining that there is constant noise coming from the tenant's apartment and that the tenant is smoking in her unit, causing the smoke to enter [REDACTED] unit. [REDACTED] has also complained that there have been several confrontations between herself and the tenant, and she informed the landlord that the police had been called on several occasions.
10. At the hearing, the landlord pointed to over a dozen text-messages he had received from [REDACTED] in which she makes these complaints to the landlord. In one of those text-messages, from October 2022, [REDACTED] writes that she had generated a file with the police, and she claimed that the tenant had "threatened to RIP my face off". On 12 December 2022 [REDACTED] writes that the tenant had been slamming the doors and banging on the walls for 2 hours straight. In a text-message from 05 June, [REDACTED] states that there is a smell of smoke in her apartment coming from the tenant's unit. The landlord pointed to several other, undated, text-messages from [REDACTED] in which she makes similar complaints about noise and the smell of smoke.
11. The landlord also claimed that [REDACTED] had made a video of one of the altercations she had had with [REDACTED] and that video was posted to Facebook and it was also provided to the police. The landlord stated that he had not viewed this video himself and it was not submitted into evidence. The landlord also claimed that on one occasion, the tenant was removed from her unit by the police, in handcuffs, and she did not return to the complex for several weeks.
12. Besides these complaints from [REDACTED] the landlord also submitted an affidavit from another resident at the complex who writes that on several occasions, he had heard banging doors at the tenant's unit, and that someone had been yelling and screaming in the laneway. He also writes that the tenant is sometimes seen in the laneway cursing and talking to herself.
13. Because of these complaints, the landlord issued the tenant a termination notice on 08 June 2023, and a copy of that notice was submitted with his application. That notice was issued under section 24 of the *Residential Tenancies Act, 2018*, and it had an effective termination date of 14 June 2023. The tenant has not moved out, as required, and the landlord is seeking an order for vacant possession of the rented premises.

The Tenant's Position

14. The tenant denied all of the allegations made against her by [REDACTED]
15. She stated that she does not smoke in her apartment, and when she does smoke, she does so outside. That testimony was corroborated by [REDACTED] She also testified that she is not responsible for any noises or any banging of doors, and claimed that it was actually [REDACTED] who is making noises at the complex. The tenant stated that it is not in her nature to be a bully, and she also claimed that she had not made any threats towards [REDACTED] She also testified that the police had not removed her from her apartment.
16. [REDACTED] also claimed that it was [REDACTED] who was causing the trouble. She stated that she had gone to the unit one day to perform a wellness check on the tenant, as she has some mental health issues. She testified that when she arrived at the apartment, she was confronted by [REDACTED] who she claimed was verbally abusive towards her and demanded that she leave the property. With respect to the video taken by [REDACTED] stated that if it had been submitted into evidence it would have shown that [REDACTED] had done nothing wrong and that [REDACTED] had not gone onto [REDACTED] property.

Analysis

17. 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.**

18. The burden of proof lies with the landlord to establish, on the balance of probabilities, that the tenant had been acting unreasonably and that that behaviour had seriously interfered with the quiet and peaceful enjoyment of the other residents at the complex.
19. The text-message evidence submitted by the landlord shows that he had received numerous complaints from [REDACTED] about noises coming from the tenant's unit, about altercations and confrontations that they had had, and about the smell of smoke entering the tenant's unit. But that sort of evidence—submissions or testimony about what someone else had seen or witnessed—is hearsay evidence and is afforded little evidentiary weight. The landlord acknowledged at the hearing that he had not witnessed any of these events, that he had not seen the video taken by [REDACTED] and he even stated that he "could only go on what [REDACTED] had told him". [REDACTED] was not called as a witness to provide any first-hand account of her interactions with the tenant, or to give any testimony concerning the sounds she can hear coming from her unit or concerning the smell of cigarette smoke.
20. On the other side, the tenant was in attendance at the hearing and she did provide her testimony about her interactions with [REDACTED] and about her behaviour. The tenant denied that she had been smoking in her unit, that she had been making any noises, or that she had gotten into any confrontations with [REDACTED]. That testimony was corroborated by [REDACTED] who was also in attendance at the hearing, and [REDACTED] claimed that it was actually [REDACTED] who was causing the problems at the complex.
21. In weighing the evidence submitted at the hearing, and given that the bulk of the landlord's evidence was hearsay evidence, I conclude that the landlord had failed to meet his burden of proof, and that he had not established, on the balance of probabilities, that the tenant had been unreasonably interfering with the peaceful enjoyment of [REDACTED] or the other resident's at the complex.

22. As such, I have to find that the termination notice he had issued to the tenant on 08 June 2023 is not a valid notice.

Decision

23. The termination notice issued to the tenant on 08 June 2023 is not a valid notice.
24. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

17 July 2023

Date


John R. Cook
Residential Tenancies Tribunal