

Residential Tenancies Tribunal

Application 2023-0572-NL

Decision 23-0572-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:15 a.m. on 01-August-2023.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant" did not attend.
4. The landlord presented two witnesses (LL#03), [REDACTED] hereinafter referred to as "witness1 and witness2," they attended by teleconference.

Preliminary Matters

5. The tenant was not present or represented at the hearing and I was unable to reach her by telephone at the start of the hearing (the landlord did not have her phone number). 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. The landlord submitted an affidavit (LL#01) with his application stating that he had served the tenant with notice of the hearing, in person, on 12-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

6. The landlord is seeking:
 - Vacant possession of rental premises
 - Hearing expenses reimbursed \$20.00

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 stated that he has a verbal rental agreement with the tenant; after she took occupancy he filled out a standard rental agreement and provided this to her detailing the terms. He said she moved in January 2023 and her rental period is from the 1st day of each month until the last. He said she pays \$750.00 a month for rent; utilities are not included. Before she took occupancy she paid a security deposit of \$400.00 and he is still in possession of that deposit.
10. The landlord submitted a termination notice (LL#02) served to the tenant. The notice is a Section 24 notice (LL#02) on a Landlord's Notice to Terminate Early – Cause form. It is signed and dated for 07-June-2023 with a termination date of 13-July-2023. The landlord said that this was served to the tenant by posting it to her door on 07-June-2023.
11. The landlord explained that there have been ongoing issues with the tenant, she lives in a four-plex and the behavior of herself and her guests are causing issues for the other renters who live there. He has received a number of complaints from the other renters. The tenant has a lot of guests coming and going at all hours of the day and night. He said that the police have attended the apartment complex a number of times. He explained that in early June the police called him to say that the front door had been kicked in and that it would require repairs. Another tenant informed him that this was done by someone who was a guest of the tenant.
12. He also stated that there have been issues with the tenant leaving garbage in the hallway, which impedes the other upstairs renter's access to her front door. She had left a twin mattress in the hallway and the landlord asked her to have it removed, after a few days he removed it himself. Currently, there is a queen mattress in the hallway.
13. Additionally, he has received complaints of used needles being found around the building.
14. Witness1 lives in the apartment on the same floor as the tenant. She said that there were issues from the start. She said that the tenant moved in overnight from 12 midnight until 5:00 a.m. which disrupted the sleep of everyone in the building.
15. She said that since the tenant has moved in the apartment building has become a "crack hotel." She said that she believes that there are drugs being sold from the apartment. She states that there is constant traffic of cars coming and going. This is ongoing day and night.

16. She said that one night a man was dragging a woman from the apartment and she was concerned, she called the police. Another night about a month ago, someone started banging on the apartment building door at 5:00 a.m. and they kicked the door in.
17. She is frightened by the guests of the tenant. She said that they know who she is and where she lives.
18. Witness2 said he has lived at the building for 11 years. Since the tenant moved in there has been constant noise, fighting, banging on doors, rocks thrown at the building, etc.
19. He said that there is so much traffic that he has written down the numbers of 47 different license plates of cars coming and going to the building.
20. He states that the people coming and going disrupts his sleep and he hasn't had a decent night of sleep since she moved in.
21. The landlord believes that the tenant's behavior is interfering with the peaceful enjoyment of the other tenants in the building and he is seeking vacant possession of the apartment.

Analysis

22. 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.

23. 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.
24. I accept the testimony and evidence of the landlord and his witnesses that the tenant and her guests' 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 tenants' enjoyment of their rental property.

25. I find that the tenant's behavior is negatively impacting the other tenants in the building. The landlord's claim for vacant possession succeeds. The tenant should have vacated the property by 12-July-2023.

Decision

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

Issue 2: Hearing expenses reimbursed \$20.00

27. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#04) and pursuant to policy 12.01, as his claim has been successful is entitled to reimbursement of that cost from the tenant.

Summary of Decision

28. 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 \$20.00 for her hearing expenses.

August 07, 2023

Date

[Redacted]
Jacqueline Williams, Adjudicator
Residential Tenancies Office