

Residential Tenancies Tribunal

Application 2023-0652-NL

Decision 23-0652-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:57 p.m. on 16-August-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, did not participate. The landlord’s authorized representative (LL#1), [REDACTED] attended the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not attend.
4. The hearing was held via teleconference.

Preliminary Matters

5. The tenant was not present or represented at the hearing and I was unable to reach him by telephone at the start of the hearing. 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 he has been properly served. The landlord submitted an affidavit with his application stating that he had served the tenant with the notice of hearing electronically by emailing it to; [REDACTED] on 26-July-2023 (LL#2). The landlord submitted proof of email address (LL#3) and also proof that he sent the email (LL#4). In accordance with the *Residential Tenancies Act, 2018* this is good service. 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 his absence.
6. The landlord’s representative stated that she is the owner of the two apartment home. She rented the main area upstairs to the applicant who in turn subletted rooms to two other tenant’s, one of whom is the respondent. The respondent moved in on 1-April-2023 and rent for the entire main area is \$1500.00 per month due on the first of every month. A security deposit was never paid.

Issues before the Tribunal

7. The landlord is seeking:
Vacant possession of the rented premises

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy.

Issue 1: Vacant Possession of Rented premises

Relevant Submissions

10. The landlord submitted a copy of the termination notice dated for 5-July-2023 under section 24 of the Act to vacate the premises by 11-July-2023 (LL#5).

Landlord's Position

11. The landlord's representative stated that the applicant is seeking vacant possession of the unit due to noise, heavy traffic flow late at night, theft and damage to premises.
12. The landlord submitted a witness affidavit from the tenant in the basement apartment (LL#6). The landlord's representative stated that a tenant in the main area vacated the premises due to the situation and the tenant in the basement apartment fears for his life. Based on the events listed on the affidavit, the landlord's representative feels that the respondent should vacate the premises immediately.

Analysis

13. 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.

14. The tenant was given a termination notice on 5-July-2023 to vacate the premises on 11-July-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 timeline requirements of the *Act*.
15. The tenant in the basement testified that on 24-June-2023 the respondent and his girlfriend began staying up all night usually until sunrise, during this time there would be screaming, fighting, things thrown around the unit, stomping on the floor and the dragging of furniture. The downstairs tenant testified that the Police had to be called on several occasions and on 28-June-2023 the forensics unit were brought onto the premises after the respondent broke into a locked bedroom and stole property. The tenant testified that on 12-July-2023, he witnessed a man along with the respondent breaking 3 windows in the house (LL#7). The tenant also testified that on 21-July-2023 he was awoken by the smell of smoke, and had to call 911 as there was a fire in the upstairs unit which he later learned to be caused by the respondent while intoxicated.
16. With regards to the interference of peaceful enjoyment, the respondent was not available to dispute any claims from the landlord and/or the basement tenant. Also, the witness statement was a sworn document from a person who resides in the rented premises, thus I accept that all events as listed on the statement to be factual. As such, I find that in accordance with Section 24 of the *Act*, the events as outlined in paragraph 15 to be actions that would definitely interfere with the peaceful enjoyment and reasonable privacy of another person residing in the same house.
17. I find that the respondent interfered with the peaceful enjoyment and reasonable privacy of other tenants residing at the rented premises.
18. I find that the respondent should have vacated the premises by 11-July-2023.

Decision

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

Summary of Decision:

20. The tenant shall vacate the property immediately.
21. 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.
22. The landlord will be awarded an Order of Possession.

August 21, 2023

Date

Pamela Pennell, Adjudicator
Residential Tenancies Office