

Residential Tenancies Tribunal

Application 2023-0706-NL

Decision 23-0706-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:00 p.m. on 29-August-2023.
2. The applicant, [REDACTED] represented by [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 a witness, [REDACTED], hereinafter referred to as “the landlord’s witness.”

Preliminary Matters

5. The tenant was not present or represented at the hearing and I reached her by telephone ([REDACTED]) at the start of the hearing, however this call was disconnected and subsequent phone calls were not answered. 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 their application stating that the landlord’s witness had served the tenant with notice of the hearing, personally on 16-August-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 submitted the rental agreement held with the tenant (LL#02). When the tenant first took occupancy 29-October-2020 they had a term lease from 01-November-2020 until 31-October-2021, presently they have a monthly lease. The tenant pays \$675.00 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 \$675.00 before taking occupancy and the landlord is still in possession of that deposit.
10. The landlord submitted a termination notice (LL#03) that was served to the tenant. The notice is a Section 24 notice (LL#03) on a Landlord's Notice to Terminate Early – Cause form. It is signed and dated for 09-June-2023 with a termination date of 16-June-2023. The landlord explained that there have been ongoing issues with the tenant and that there was a letter sent to her on 09-March-2023 (LL#07) and another one dated for 08-June-2023 (LL#08) concerning issues with her behavior. Both of these letters, as well as the termination notice were posted to the tenant's door on 09-June-2023.
11. The landlord said that he has received numerous complaints from other renters in the tenant's building. The tenant lives in a three story building, each story has three apartments, her apartment is on the top floor.
12. The tenant has a dog, no one has complained about the dog, however this is not allowed according to the rental agreement (LL#02). The landlord believes that the tenant permits the dog to urinate on her deck. Her deck is directly above another apartment door. The renter in that apartment will hereinafter be referred to as renter1, she contacted him to say that the tenant was pouring boiling water on her deck and that this was running through the slats onto her deck. The landlord suspects that it could be to rinse the dog urine, the tenant told renter1 that she was having freezing of her door and it was to unlock the door.
13. Renter1 sent the landlord a video (LL#03) showing the boiling water pouring through the slats onto the step in front of her doorway. The landlord said that there have been issues with the tenant throwing garbage off the deck, which is dangerous for those below, but he emphasized his disbelief that she would pour boiling water on the deck, knowing that this would pour down on the deck below. He said that this could have seriously hurt renter1. The letter (LL#07) sent on 09-March-2023 informed the tenant that these behaviors would not be tolerated and could result in termination of her rental agreement.

14. The landlord said that renter1 asked him not to tell the tenant she complained, because she is concerned about the repercussions. At this time she requests that if another unit opens up on the other side of the building she would like him to rent her a different apartment.
15. 08-March-2023 the tenant is informed of the issues with her behavior and she goes to confront renter1. The tenant wasn't told who made the complaint, but she assumes it is renter1. Renter1 audio tapes the confrontation (LL#05). The tenant was confrontational and insulting with renter1. She accuses her of making complaints against her. Renter1 does tell her that she can smell the weed being smoked in the tenant's apartment, she states she never complained about the dog and that she has issues with the garbage thrown on her deck.
16. Renter1 told the landlord that she was afraid of the tenant and that the next time she would call the police. The landlord encouraged her to call the police if the renter was confrontational with her in the future.
17. 25-March-2023, the landlord said that renter1 contacts him to inquire if the tenant is going to be moving? She tells him that she is very nervous and the other renters are also "on the edge." Renter1 was unable to continue living at the apartment building, the impact of the tenant was too much and renter1 subsequently moved on 15-August-2023.
18. 25-May-2023, another renter, hereinafter referred to as renter2, contacted the landlord and left a message (LL#09), his daughter (under 10) went missing and they had contacted the police. When they finally found the young girl she was in the tenant's apartment. Renter2 told the landlord in the message that the tenant had basically kidnapped his child. Message submitted (LL#09). Renter2 is asking that something be done about the tenant.
19. The police showed up to question renter2 about this incident and the tenant came down and was incredibly aggressive with both the police and renter2. He gave the audio tape of this to the landlord and he submitted it for this hearing (LL#06). Renter2 told the landlord that she was up in his face during the incident.
20. Another renter, hereinafter referred to as renter3, also spoke to the landlord. Renter3 said that the tenant had been aggressive with him and was saying nasty things about his girlfriend.
21. The landlord said that there have been numerous complaints and many of the renters are questioning when the tenant will be moving. He said that the tenant has caused issues with a number of people and if she is not evicted, he is concerned that many more will move out like renter1.
22. The landlord states 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

23. 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.

24. 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.
25. I accept the testimony and evidence of the landlord that the tenant's behavior is disruptive. It is reasonable to believe that the tenant's aggressive behavior would interfere with the other tenant's enjoyment of their rental property.
26. I agree with the landlord and find that his claim for vacant possession succeeds. The tenant should have vacated the property by 16-June-2023.

Decision

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

Issue 2: Hearing expenses reimbursed \$20.00

28. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#10) 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


29. 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 hearing expenses.

August 31, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office