

Residential Tenancies Tribunal

Application 2023-0804-NL

Decision 23-0804-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 2:00PM on 28 September 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, attended the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not attend the hearing, nor was she represented.

Preliminary Matters

4. The tenant was not present or represented at the hearing and there was no contact information for the tenant. 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 (**Exhibit L # 1**) as well as proof of service (**Exhibit L # 2**) with her application stating that she served the tenant with notice of the hearing on 5 September 2023 at 11:08 AM. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeding with the hearing in her absence.
5. The landlord is seeking an order of eviction and an order of possession of property of the rental address of [REDACTED].
6. The landlord did not make any amendments to his application during the hearing.

Issues before the Tribunal

7. The landlord is seeking the following:

- An order for vacant possession of the rented premises;
- Hearing expenses \$20.00

Legislation and Policy

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

10. Also relevant and considered in this case are the following sections the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions and Section 24: Notice where tenant contravenes peaceful enjoyment and peaceful enjoyment. In addition, Policy 12-1 *Recovery of Fees: Filing, Costs, Hearing Expenses, Interest, Late Payment and NSF* and the *Rules of the Supreme Court, 1986*.

Issue 1: Vacant Possession of Rented Premises

Landlord Position

11. The landlord offered testimony the tenant had initially moved to [REDACTED] [REDACTED], in September 2021 after being offered by the landlord as, "I took her in my home". The landlord stated there was originally a verbal agreement in place which did not include a security deposit and a monthly rental amount of \$925.00 due on the 29th day of each month. This rental amount included heat and lights included and the tenant remains in the property on the date of the hearing.
12. The landlord offered testimony there has been recent situations when the noise of the tenant has negatively impacted her. In addition, concerns were expressed with the visitors of the tenant.
13. The landlord had a witness during the hearing, who offered testimony, who was identified as a family member. That said, the witness did not have first-hand evidence or testimony of the behaviors' of the tenant impacting the landlord, rather what appeared to be second hand hearsay information.
14. The landlord suggested there was another tenant in the residence of [REDACTED] [REDACTED], that was negatively impacted by the alleged actions of the tenant. The landlord indicated the second tenant did not wish to offer any testimony or evidence.

15. The landlord offered evidence that a Landlord's Notice to Terminate Early- Cause to the tenant on 28 August 2023, to move out of the residential premises by 3 September 2023 (**Exhibit L # 3**).

Analysis

16. 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 conditions governing the residential premises apply:

...

2. Obligation of the Tenant- The tenant shall keep the residential premises clean, and shall repair damage caused by a willful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

...

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 of the property of which they form a part.

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 tenant. Peaceful enjoyment may include, but is not limited to the following: (i) excessive noise; (ii) aggressive or obnoxious behavior; or (iii) threats and harassment.

17. I accept the testimony of the landlord that the tenant's alleged actions could have contributed to stress on the landlord. That said, there was very little actual evidence offered and what appeared to be mainly hearsay information. The landlord expressed of a situation when a visitor had attended the residence and offered, "*\$90,000 showed up at my door. He showed up. The first thing came to my mind is that he is a pimp or it is drug related and that put me over the edge*".
18. The concerns with such statements and lack of detailed evidence and testimony is that proceedings under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that her account of events are more likely than not to have happened. As well, hearsay information does not exceed the bar in the lens of the balance of probabilities.

19. It is for these reasons that I find there was not sufficient evidence, as based on the balance of probabilities, for the landlord's claim to succeed.

Decision

20. The landlord's claim for vacant possession fails.

Issue 2: Hearing Expenses- \$20.00

Landlord Position

21. The landlord paid an application fee of \$20.00 (**Exhibit L # 4**). The landlord is seeking the cost.

Analysis

22. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlord are considered a reasonable expense and are provided for with in Policy 12-1 *Recovery of Fees: Filing, Costs, Hearing Expenses, Interest, Late Payment and NSF*. As the landlord claim has failed, I find the tenant is not responsible to cover these expenses.

Decision

23. The landlord's claim for hearing expense fails.

Summary of Decision

24. The landlord's claims fail.

17 October 2023

Date

