

Residential Tenancies Tribunal

Application 2023-0867-NL

Decision 23-0867-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:09 a.m. on 31-October-2023.
2. The applicant, [REDACTED], represented by the Caretaker, [REDACTED] and the owner, [REDACTED]; hereinafter referred to as "landlord1 and landlord2," they attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant" attended by teleconference.
4. The landlords presented a witness, [REDACTED], hereinafter referred to as "the witness."

Preliminary Matters

5. The landlords submitted an affidavit (LL#01), stating that landlord1 served the tenant with notification of today's hearing in person on 19-October-2023. The tenant confirmed receipt of notification as stated.

Issues before the Tribunal

6. The landlord is seeking:
 - Vacant possession of rental premises

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

Landlords' Position

9. The landlords submitted the monthly rental agreement held with the tenant (LL#02). The tenant took occupancy 01-May-2014, he pays \$600.00 rent a month. The 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. A security deposit of \$300.00 was made on 01-May-2014 and landlord2 confirms that they are still in possession of the deposit.
10. Landlord1 submitted a termination notice (LL#03) served to the tenant. The notice is a Section 24 notice on a Landlord's Notice to Terminate Early – Cause. It is signed and dated for 11-August-2023 with a termination date of 18-August-2023. Landlord1 said that she personally served this notice to the tenant on 11-August-2023.
11. Landlord1 said that there have been ongoing issues with the tenant, she explains that she is the building caretaker, and she receives numerous complaints about the tenant. She said that when she initially moved into the building in 2019, she lived directly upstairs of the tenant. At that time, she would occasionally hear some noise from his apartment, but she said that the noise would be considered normal apartment noises.
12. She said she currently lives in the apartment below the tenant. She believes that the noise now is not typical apartment noise. She said that the tenant used to have his TV up very loud all hours of the day and night. She describes the TV being up on bust sometimes from 5:30 am until 1:00 am. She states that this noise can be heard by apartments on the other side of the building, but it is most impactful to the units directly above, below and alongside his apartment.
13. Landlord1 said that there is a mother with a 9 year old autistic child in one of those apartments and that the noise from the TV is very disruptive in their life. The child often can't sleep because of the TV. Landlord2 said that this mother has had to take the child somewhere else to sleep on occasion, due to the noise and that this is unfair.
14. Landlord1 states that the tenant has visitors hanging around who have been disrespectful to herself and other tenants. She said that on one Saturday night she went up to complain about the noise from his apartment and one of the women he had over told her to "go fuck herself."
15. On another occasion, there was a light out in the building, she explains she had contacted someone to replace the light. That evening the tenant showed up at her door after 11:00 pm yelling at her to get the light fixed, she said he was BBQing, and he couldn't see.
16. She said that a neighbor in apartment 12 came to her complaining that one of the tenant's visitors came to her apartment looking for weed. When the neighbor told the individual that she wasn't a drug dealer and that she isn't supposed to be in the building, the visitor became confrontational.

17. Landlord1 submitted an email (LL#04) sent to landlord2 from her witness who has a 9 year old child with Autism. The email lists the following complaints:

- He is hammering and banging all hours
- Heavy drug user
- She has watched him enter another unit uninvited (video provided (LL#06)
- He plays his TV so loud it can be heard on the other side of the building
- He approaches children on the street
- He listens in at her door and she has seen his ear pressed to her door peephole
- She believes he has damaged her car and she has set up a camera

18. The witness, who sent the landlord the email, was called to testify. She states that her daughter is afraid of the tenant. She said that he is causing issues at the building. She explained on one occasion he was out feeding the crows and he was near her car, she asked him to move away from the car and he became angry. He threatened to burn the building down, which she states is a serious concern and the police were called. She said that when she is coming and going from the apartment building the tenant and his friends say things to her when she is with her child to start a fight. Video provided (LL#08)

19. The witness said that her daughter is traumatized by the tenant's behavior. She saw a lawyer and he provided a letter (LL#07). She said that the lawyer agrees that she is being harassed.

20. The witness stated that this morning while she was waiting for the hearing, her cat knocked down a pumpkin and the police showed up because the tenant called in a wellness check.

21. Landlord1 said that there are other children in the building who are afraid of the tenant and she said that there is a neighboring childcare that has to take the kids in when he is hanging around. The issues with this tenant are known in the community. She said that she has had two individuals who were looking to rent in the apartment building and they were told by their employer to avoid the building because of the tenant.

22. Landlord1 said there was another complaint from a tenant who has a dog. She said that the tenant was very confrontational with her about her dog.

23. Landlord2 said that the tenant is a long-time renter. She explains that the past two years the issues with this tenant have been increasing. Currently she rents 100 apartments and she said she always receives complaints about different tenants; however, this tenant has had more complaints against him than all the other apartments combined. She said that she is worried about how his behavior has progressed and she is afraid for the other people in his building.

24. The landlords state that the tenant's behavior is interfering with the peaceful enjoyment of the other tenants in the building, and she is seeking vacant possession of the apartment.

Tenant's Position

25. The tenant confirms the details of his rental agreement as presented by landlord2. He also confirms the service of the termination notice.
26. The tenant agrees that he had a conversation about the late-night noise with landlord2. He made an agreement that he would keep the noise down between 9:00 pm and 9:00 am. He explains that he did have a get together after this and that when landlord1 arrived, his guest was confrontational with her. The guest was not aware that there was an agreement, and it was just after 9:00 when landlord1 came up about the noise.
27. The tenant confirms he called in a wellness check on the witness this morning. He said he hates her but wouldn't want her to be dead.
28. He does confirm that he has been walking past the daycare and has passed toys back in through the fence. He said that the staff watch him pretty closely.
29. The tenant disputes that the police have issues with him, he said that they are usually laughing when they come see him and if they thought that he was a danger to children or the building then they would take him in and charge him.
30. The tenant acknowledges that he was confrontational with the woman about her dog. He explains that he was on his deck talking to another person and the dog just kept barking the whole time.
31. The tenant explains that he does struggle with addictions and mental health issues.
32. The tenant states that he and landlord1 hate each other and that they are always at odds.

Analysis

33. 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.***

34. 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.
35. I accept the testimony and evidence of the landlords that the tenant's behavior is disruptive. The landlords have provided email evidence of complaints, video evidence and witness testimony to show that the issues that are ongoing with the tenant are disruptive to the others in his building.
36. 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 18-August-2023.

Decision

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

Summary of Decision

38. 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.

November 7, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office