

## Residential Tenancies Tribunal

Application 2023-0878-NL

Decision 23-0878-00

Jacqueline Williams  
Adjudicator

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### Introduction

1. Hearing was called at 2:00 p.m. on 18-October-2023.
2. The applicant, [REDACTED], represented by [REDACTED] and [REDACTED], hereinafter referred to as "landlord1 and landlord2" attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant" did not attend.

### Preliminary Matters

4. 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, as there was no number provided. 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 they had a Sheriff serve the tenant with notice of the hearing, personally, on 25-September-2023. (Affidavit was completed by the Sheriff.) 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

5. The landlord is seeking:
  - Vacant possession of rental premises
  - Hearing expenses reimbursed \$158.32

### Legislation and Policy

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

7. 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

8. The landlord reviewed the monthly rental agreement held with the tenant. The tenant took occupancy 01-November-2022, she pays \$600.00 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 \$200.00 on 01-November-2022 and the landlord is still in possession of the deposit.
9. The landlord submitted the termination notice (LL#02) he served to the tenant. The notice is a Section 24 notice (LL#02) on a Landlord's Notice to Terminate Early – Cause. It is signed and dated for 07-September-2023 with a termination date of 13-September-2023. The landlord said that he served the notice to the tenant in person.
10. The landlord explained that there are three apartment buildings together on the property. The tenant is in building B. He said that there have been ongoing issues with the tenant, and he has received numerous complaints from the tenants in the other apartments in building B, as well as tenants in building A.
11. The landlord submitted a letter given to the tenant 19-June-2023 (LL#03). At that time there was a report that she had a cat, and a dog that would occasionally stay with her. The building has a no pet policy. The landlord stated that this issue was addressed with the tenant. They gave 24 hours' notice to enter, and he went into the apartment. At that time the tenant was not home, however, her boyfriend was present and let the landlord in. He said he did not see the cat, but he believes he smelled kitty litter. He acknowledges that there are ongoing complaints about the cat, but he has never actually seen the cat.
12. In July, the landlord received numerous complaints from other tenants, that the tenant and her boyfriend had a quad with either no exhaust pipe or a damaged exhaust. The reports stated that they were out until late night/early morning hours going around the building. This was disturbing the sleep of the other tenants. One tenant sent the landlord a video, time stamped for 4:25 a.m. (Video not submitted.) The landlord said that he tried to speak with her about this issue and get her to agree to shut off the quad or not rev the engine and wake everyone. He said that the issue continued, and he believes that the authorities have now confiscated the quad, so this is no longer an issue.
13. There are also complaints that the tenant has large groups of people who hang around the building and her apartment. This issue continues all hours of the day and night, the guests are frequently drinking, and they argue and fight. He recalls on 17-September-2023 there were people out fighting in front of building A. He received complaints and went out to address the disturbance with the people. He said he identified himself and that they introduced themselves and said that they were friends with the tenant and another person in building C. He asked them to leave. He said that they ended up going up to the tenant's apartment. He explained that the building has security, and you

must be let in by someone who lives in the building. So, he states that she must have let them in after he asked them to leave.

14. On 24-September-2023 4 police cars surrounded the building. He said that they were looking for one of the people he had the issue with on the 17-September-2023. The police told him that they were there to check the tenant's apartment. At that time, the person was found coming out of building C.
15. The landlord explained that the tenant and her boyfriend have had troubles with the law, he clarifies that this in itself is not an issue, however the couple is well known, and people are fearful of them. He said he has received numerous complaints, but the other tenants are hesitant to be named because they are afraid. He said that there are many elderly people renting there and 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

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 statutory 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 wilful 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 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.*

17. 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.
18. I accept the testimony and evidence of the landlord that the tenant and her guest's 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 tenant's enjoyment of their rental property.
19. I agree with the landlord and 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 13-September-2023.

## Decision

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

### Issue 2: Hearing expenses reimbursed \$158.32

21. The landlord submitted the receipts totaling \$158.32 for the cost of the hearing (LL#04), as follows:

- Application fee ..... \$20.00
- Registered mail ..... 13.44
- Registered mail ..... 24.88
- Server's fee ..... 100.00
- Total..... \$158.32

Pursuant to policy 12.01, as the claim has been successful the landlord is entitled to reimbursement of those costs from the tenant.

### Summary of Decision


22. 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 \$158.32 for his hearing expenses.

October 23, 2023

Date

  
Jacqueline Williams, Adjudicator  
Residential Tenancies Office