

Residential Tenancies Tribunal

Application 2023-0912-NL

Decision 23-0912-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:08 a.m. on 07-November-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” attended by teleconference.
4. The tenant submitted an authorized representative form (TT#01) naming [REDACTED], [REDACTED] at the [REDACTED], as his authorized representative. She attended by teleconference, hereinafter referred to as “the authorized representative.”
5. The landlord called [REDACTED], [REDACTED], hereinafter referred to as “the witness.”

Preliminary Matters

6. The landlord confirmed she served the tenant with notification of today’s hearing, electronically ([REDACTED]), on 26-September-2023. The tenant confirmed receipt of notification as stated by the landlord.

Issues before the Tribunal

7. The landlord is seeking:
 - Vacant possession of rental premises
 - Hearing expenses reimbursed \$20.00

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 10: Statutory conditions, Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy and Section 35: Service of documents.

Issue 1: Vacant Possession of the Rental Premises

Landlord's Position

10. The landlord stated that they have a monthly written rental agreement with the tenant. The tenant took occupancy 01-March-2022, he pays \$875.00 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 \$430.00 was made on 07-February-2022; the landlord confirms that they are still in possession of this deposit.
11. The landlord submitted the termination notice (LL#02) 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 14-September-2023 with a termination date of 28-September-2023. The landlord said that this notice was served to the tenant by prepaid registered mail. The landlord provided the tracking number [REDACTED] which confirms that the package was processed on 14-September-2023, however, it was never collected by the tenant.
12. The landlord said that on the night of 30-August-2023 there was an incident on the tenant's floor. The incident was between the tenant (who lives in apartment [REDACTED]) and the renter below him in apartment [REDACTED]. The renter from [REDACTED] later explained to the landlord's staff, that that he went up to the tenant's floor because there was a lot of noise coming from the tenant's apartment and it sounded like someone jumping on the floor. He said he knocked on the door and no one answered.
13. The landlord submitted time stamped pictures from the 4th floor hallway video tape (LL#04). She said that even though the tenant did not answer the door when the renter from 318 knocked, he was home at the time and shortly after came out into the hall. She explained in the first picture (time 19:11:54) you can see the tenant coming out of his apartment, there is apparently no one else around him and he is beating on his own exterior wall.
14. In the second and third pictures (time 19:21:18 & 19:21:20) you can see the tenant with something around his shoulders like a cape or blanket in an altercation with the renter from 318. The tenant is clearly holding a weapon that appears to be a large knife.
15. In the last picture you can see the tenant moving away from the renter in 318 (time 19:21:33). His weapon is clearly visible.
16. The landlord calls a witness, who is the Resident Manager. The witness said that on the night of 30-August-2023 around 7:00 p.m. he received calls about the fight on the 4th floor hallway. He said that the tenant pulled a knife on another renter. He told the renter from [REDACTED] 8 to go back to his apartment. At that time he said the tenant was being loud and yelling. Someone called the police and they arrived. They questioned everyone, viewed the tape and the arrested the tenant.

17. The witness said that on the night of the incident people were looking out into the hallway from their own apartments. The incident was upsetting for them.
18. The landlord said that later the police came back with a warrant to search (LL#05), she confirms that they provided the video evidence. The warrant states that:

“On the 30th of August,2023, at [REDACTED] in the province of Newfoundland and Labrador, [REDACTED], did carry a weapon for a purpose dangerous to the public peace, to wit: an unknown person was presented with a kitchen knife being held towards them in a hallway on the fourth floor...”
19. The landlord also declared that the night of the incident, the tenant told the Resident Manager to change the locks to his apartment.
20. The landlord confirms that the tenant had reached out previously to have his apartment changed. He had complained to her about hearing noise, she said he believes that the apartment above him purposely makes noise when he is home. She explains that there are few apartments available to accommodate this switch, the person who lives upstairs is an older person, who doesn't even own a t.v. Additionally the tenant receives income support and no one from that agency has reached out with approval for him to make this change. She did suggest that potentially living in a large apartment complex might not be suitable for the tenant. The witness said that the issues with noise are coming from the tenant's apartment.
21. The landlord states that the tenant's behavior is interfering with the peaceful enjoyment of the other tenants in the building, there are 106 units and she is concerned should he return and have another incident like this, someone could be injured or killed. She stressed that he was in the common area with a large knife, where anyone could be and someone could have been hurt. She is seeking vacant possession of the apartment.

Tenant's Position

22. The tenant confirms the details of the rental agreement as stated by the landlord. He states that he did not receive his termination notice until he received his hearing package on 26-September-2023.
23. The authorized representative confirms that the tenant has not returned to the building since the night of the incident. The tenant explains that he has a no contact order and is to stay away from the building. His next court date is tomorrow.
24. The tenant doesn't dispute the incident, the authorized representative relayed that he said that he was afraid for his safety the night the renter from [REDACTED] came up to his doorway. The tenant declared that there had been previous issues with this other renter.
25. The tenant explained that he was banging on the wall outside his apartment because his girlfriend was in there and he was afraid for her safety.

26. The tenant said since the night of the incident he has seen the renter from [REDACTED] around town and that they have moved on and are cordial when they see one another.
27. The authorized representative stated that the tenant said that this behavior is out of character for himself, he doesn't carry a knife and was just in fear of his safety.
28. The tenant confirms that there has been issues with noise and he has requested from the landlord to change his apartment.
29. The tenant said that when he was arrested, he did ask the Resident Manager to change the locks so that his girlfriend could not enter the apartment.

Analysis

30. The landlord has submitted a termination notice for cause for interference with peaceful enjoyment. In accordance with Section 24 of the *Residential Tenancies Act, 2018*, the landlord must give notice in accordance with Section 35, as follows:

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.

31. I accept the tenant's testimony that he first saw his termination notice when he was served electronic notification of today's hearing on 26-September-2023. The landlord had sent him his termination notice by prepaid registered mail on 14-September-2023; in accordance with Section 35 of the *Residential Tenancies Act, 2018*, this notice is considered served on the fifth day after mailing, therefore served on 19-September-2023. It is the tenant's responsibility to collect his own mail.

Service of documents

35. (1) A notice or other document under this Act other than an application under section 42 shall be served by a tenant on a landlord by

...

(e) sending it to the landlord by **prepaid registered mail** or prepaid express post at an address

(i) where rent is payable,

(ii) *provided under subsection 7(7) or (8), or*

(iii) *where the landlord carries on business;*

...

(5) *For the purpose of this section, where a notice or document is sent by registered mail or express post, it **shall be considered to have been served on the fifth day after mailing**, and the service may be proved by providing evidence that the notice or document was prepaid and properly addressed and sent.*

32. Notification served on 19-September-2023 with a termination date of 28-September-2023 meets the requirement of Section 24 of the *Residential Tenancies Act, 2018*, of not less than 5 days notice. I therefore find that the notice served to the tenant meets the service requirements of the *Act*.
33. The burden of proof for any termination notice for cause is that of the applicant. The landlord, in this case, must prove based on the balance of probabilities, that the tenant did interfere with the peaceful enjoyment and reasonable privacy of either the landlord or other tenants, in accordance with Section 10 of the *Residential Tenancies Act, 2018*.
34. 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.

35. 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.
36. I accept the testimony and evidence of both parties that the tenant's undisputed behavior on the night of the incident was disruptive and dangerous.
37. The tenant stated that there had been previous issues with the renter below him and further to this, the landlord's warrant (LL#05) includes in part 2:

"On the 30th of August, 2023, at [REDACTED] in the province of Newfoundland and Labrador, [REDACTED], while being bound by a release order made on the 9th of August, 2023 at the Provincial Court of St. John's, Newfoundland and Labrador, without reasonable excuse failed to comply with that order, to wit: [REDACTED] was contacted directly in apartment [REDACTED] of said address, and to wit: [REDACTED] did concealed a knife on his person...."

This section of the warrant is very telling, if the best predictor of future behavior is past behavior, then the tenant has shown by his actions that he was not compliant with a previous "no contact order" just determined 3 weeks before and therefore puts into question whether he would be compliant in the future. This action shows that the landlord's concern that there is a potential of a future occurrence is quite probable.

38. I agree with the landlord and find that the tenant's behavior on the night of the incident negatively impacted the other tenants in the building. I find that the tenant did, by his actions, interfere with the other tenants enjoyment of their rental property.
39. The landlord's claim for vacant possession succeeds. The tenant should have vacated the property by 28-September-2023.

Decision

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

Issue 2: Hearing expenses reimbursed \$20.00

41. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#07) and pursuant to policy 12.01, as her claim has been successful, I determine she may retain \$20.00 from the tenant's security deposit.

Summary of Decision

42. 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 landlord shall retain from the tenant's security deposit \$20.00 for the hearing expenses.

November 9, 2023

Date

[REDACTED]
Jacqueline Williams, Adjudicator
Residential Tenancies Office