

Residential Tenancies Tribunal

Application 2023-0956-NL

Decision 23-0956-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 14 October 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", attended the hearing. The landlord called a witness, [REDACTED], hereinafter referred to as "[REDACTED]". The landlord also offered written evidence signed by four tenants of [REDACTED] [REDACTED], [REDACTED], [REDACTED] and [REDACTED], hereinafter referred to as "Tenants of [REDACTED]".
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**) with his application stating that he served the tenant with notice of the hearing on 2 November 2023 at approximately 12:30 PM. 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.
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 amended to his application during the hearing and was only seeking an order of vacant possession.

Issues before the Tribunal

7. The landlord is seeking the following:

- An order for vacant possession of the rented premises.

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 case are the following sections the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Section 24: Notice where tenant contravenes peaceful enjoyment and peaceful enjoyment, along with Sections 34 and 35.

Issue 1: Vacant Possession of Rented Premises

Landlord Position

10. The landlord offered testimony the tenant had initially moved into [REDACTED] [REDACTED] in approximately May 2023. The landlord stated there was originally an oral agreement in place which did not include a security deposit and a monthly rental amount of \$850.00 due on the 1st day of each month. This rental amount does not include any utilities and the tenant remains in the property on the date of the hearing (14 November 2023).
11. The landlord offered testimony there has been recent situations when the noise of the tenant has negatively impacted other tenants and neighbors of the apartment building. In addition, concerns were expressed with the visitors of the tenant, which has resulted in the landlord issuing the tenant termination notice on 6 October 2023, to vacate the property by 16 October 2023 (**Exhibit L # 2**).
12. The landlord offered testimony it was common to have a police presence at [REDACTED] [REDACTED] attending the residence of apartment 12. Furthermore, the landlord had expressed there were complaints by other tenants of [REDACTED] and [REDACTED], regarding the excessive noise and yelling from apartment [REDACTED].
13. The landlord had a witness, [REDACTED], who offered testimony at the hearing. [REDACTED] suggested he has observed police at the door of the respondent's apartment on a consistent ongoing basis. Furthermore, he suggested there were a number of visitors at the respondent's apartment, all hours of the night, and it was commonplace for excessive noise to result that would wake him.

14. [REDACTED] stated both himself and other tenants of [REDACTED], were being directly impacted by the behavior of the respondent. [REDACTED] further offered that himself and the other tenants of the building had safety concerns with the amount of traffic, both vehicles and individuals, visiting apartment [REDACTED].
15. The landlord offered into evidence a signed statement by four tenants of [REDACTED] Street and [REDACTED]. As detailed within that signed document, "We as the tenants of [REDACTED] are wanting the tenant in [REDACTED], is causing so much trouble for the working class tenants. She has her music blasting all hours of the night. She has her place being ran thru by all kinds of people. The police are up in the area more then their (they are) at the police station. The tenant that is suppose to be the leaseholder is [REDACTED]. She is kicking in tenants doors, you can't go to laundry room to do laundry because she has her people there. There is no comfort with her living there" (**Exhibit L #3**).
16. The evidence within the signed statement by "Tenants of [REDACTED]" suggests there are concerns with illicit substance use by the tenant and visitors of [REDACTED]
17. The landlord offered evidence that a Landlord's Notice to Terminate Early- Cause to the tenant on 6 October 2023, to move out of the residential premises by 16 October 2023 (**Exhibit L # 2**).

Analysis

18. 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.

19. I accept the testimony of the landlord that the tenant's alleged actions are having a negative impact on the peaceful enjoyment of other tenants of both [REDACTED]. [REDACTED] In addition to testimony offered by the landlord, there was also testimony provided by a witness, who stated the actions of respondent was having direct impact on his peaceful enjoyment of the apartment building. Furthermore, signed statements by "tenants of [REDACTED]", also express concerns with their peaceful enjoyment and the use of the laundry room at [REDACTED], is directly impacted by the actions of the respondent.
20. The validity of the termination notice is determined by its compliance with the notice requirements identified in Section 24 and 34 as well as the service requirements identified in section 35.
21. Section 24 requires that when a premises is rented for month to month, the landlord can 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 serviced. On examination of the notice issued and submitted into evidence (**Exhibit L # 2**), I find the notice was served on 6 October 2023 with a termination date of 16 October 2023. The notice issued is in clear compliance with the requirements of section of section 18(2)(b). Sections 24(2) and 34 identify the technical requirements of the termination notice. On examination, I find that all the criteria have been met.
22. 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 his account of events are more likely than not to have happened. While I can not accept the hearsay evidence about potential illicit substance use within apartment 12, I can accept that the actions of the tenant is having an impact on the peaceful enjoyment of other tenants at both [REDACTED].
23. It is for these reasons that I find there is sufficient evidence, as based on the balance of probabilities, for the landlord's claim to succeed.

Decision

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

Summary of Decision

25. The landlord's is entitled to the following:

- An order for vacant possession of the rented premises; &
- Tenant shall pay to the landlord 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

15 November 2023

Date

Michael J. Reddy
Residential Tenancies Office