

Residential Tenancies Tribunal

Application 2023-1004-NL

Decision 23-1004-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 11 December 2023 via teleconference.
2. The applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as “the landlord”, attended the hearing. The landlord called a witness, [REDACTED], hereinafter referred to as “the witness”. The witness is both employed with [REDACTED] as a building manager and tenant of the rental property.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not attend the hearing, nor was he represented. Prior to the start of the hearing, I attempted to contact the tenant by telephone ([REDACTED]) at 1:47 PM but was unsuccessful.

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 he 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 by registered mail ([REDACTED]) on 24 November 2023. 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 vacant possession of property of the rental address of [REDACTED].
6. The landlord did not amend 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.

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 moved in to [REDACTED] on 21 November 2022 which involved a fixed term rental agreement, that has since evolved into a monthly rental arrangement. The rental address was described as a multi-residential building. The landlord stated there was a security deposit collected on the rental in the amount of \$671.25 in November 2022. The monthly rental amount of \$918.00 is due on the 1st day of each month. This rental amount does not include any utilities and the tenant remains in the property as of the date of the hearing (11 December 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. Following those situations, the landlord offered evidence indicating the tenant had been issued letters concerning the tenant's breach of Section 10 of the *Residential Tenancies Act*, 2018 (**Exhibit L # 2**). As indicated within that evidence, the tenant was issued letters of his breaching Section 10 of the *Act* as follows:
 - 5 June 2023
 - 14 August 2023
 - 21 August 2023
12. The landlord offered testimony the Royal Newfoundland Constabulary had attended the tenant's rental address on two occasions due to an afterhours noise complaint, followed by a situation where guests of the tenant were disruptive to other tenants.

13. The landlord had a witness, who offered testimony at the hearing. The witness suggested she has observed police at the door of the respondent's apartment on two occasions. Furthermore, she stated there was a situation a week after she had issued the tenant his second letter concerning his disruptive behavior on 14 August 2023, she was contacted by another tenant on 20 August 2023 that the tenant was attempting to gain entry into their apartment. The witness stated there had been a number of occurrences when she had been contacted by other tenants of [REDACTED], complaining about the actions of the tenant.
14. The landlord stated that due to the actions of the tenant, a Landlord's Notice to Terminate Early- Cause was issued to the tenant on 30 August 2023 with a request to be out of the rental by 5 September 2023 (**Exhibit L #3**).
15. The landlord stated on the day of the hearing (11 December 2023), the tenant remains in the rental at [REDACTED] and there were concerns that the tenant was having a negative impact on the other tenants.

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 are having a negative impact on the peaceful enjoyment of other tenants of [REDACTED]

[REDACTED]. In addition to testimony offered by the landlord, I also accept testimony provided by a witness, who stated the actions of respondent was having direct impact on her peaceful enjoyment of the apartment building.

18. 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.
19. In instances where there is a violation of section 10(7), section 24 requires that 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 #3**), I find the notice was served on 30 August 2023 with a termination date of 5 September 2023. The notice issued is in clear compliance with the requirements of sections 24 and 34 of the Act.
20. 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. I accept the evidence presented that the action of the tenant is having an impact on the peaceful enjoyment of other tenants at [REDACTED].
21. 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

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

Summary of Decision

23. The landlord's is entitled to the following:
 - An order for vacant possession of the rented premises; and
 - 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

14 December 2023

Date

[REDACTED]
Michael J. Reddy
Residential Tenancies Office