

Residential Tenancies Tribunal

Application 2023-1074-NL

Decision 23-1074-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:05 a.m. on 28-November-2023.
2. The applicant, [REDACTED], represented by [REDACTED] (applicant 1) and [REDACTED] (applicant 2), hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent, [REDACTED], herein referred to as "the tenant" attended by teleconference.
4. The landlord called 4 witnesses into the hearing at separate times. The witnesses were as follows; [REDACTED] (witness 1), [REDACTED] (witness 2), [REDACTED] (witness 3) and [REDACTED] (witness 4).

Preliminary Matters

5. The landlord submitted an affidavit with their application stating that they served the tenant with the notice of hearing electronically by email to [REDACTED] on 17-November-2023 (LL#1). The tenant confirmed receiving the document on that day. In accordance with the *Residential Tenancies Act, 2018* this is good service.
6. The rental unit is an apartment within an 8-unit apartment building. There is a written month to month rental agreement which commenced on 1-November-2023. Rent is \$800.00 per month due on the first of each month. A security deposit of \$600.00 was paid on 1-October-2023 and is still in the possession of the landlord.

Issues before the Tribunal

7. The landlord is seeking:
 - An order for vacant possession of 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 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.

Issue # 1: An Order for Vacant Possession of Rented Premises

Relevant submission:

10. The landlord submitted a termination notice under Section 24; Notice where tenant contravenes peaceful enjoyment and reasonable privacy. The notice was dated for 16-November-2023, with a termination date of 27-November-2023 (LL#2).

Landlord's Position

11. The landlord testified that there were disturbances within the unit from the beginning of the tenancy and stated that the other tenants within the apartment building are mostly elderly who have resided there for a long time. The landlord stated that they have received several complaints from the other tenants who stated that they are scared and fearful to sleep at night. Applicant 1 testified that on 2-November-2023 there was an altercation at the unit which consisted of loud noise, banging and things being thrown around. Personal items belonging to the tenant were thrown out the front door.
12. Applicant 1 testified that on 16-November-2023 there was another disturbing incident at the unit around 4:00am whereby other residents were awoken from their sleep to loud banging on the tenant's door and screaming. The landlord stated that a young child was in the unit that night and the child was heard crying.
13. The landlord testified that in addition to the above noted incidents, they also received complaints of noise and banging on 4-November and 5-November. The landlord called 4 witnesses who reside at the apartment building to give testimony in support of their claim.
14. Witness 1 was questioned by applicant 1 and testified that on 2-November-2023 there was arguing and banging around 6:45pm which left her feeling scared and she was unable to sleep that night. Witness 1 testified that on 16-November-2023 she was awoken to loud banging and screaming at the tenant's door. Witness 1 stated that she went outside to have a cigarette and she could see the tenant banging on the door and kicking the door trying to get inside.
15. Witness 1 testified that she made complaints to the landlord on other occasions as well, including the day of the 4-November and again at 2:35pm on 5-November due to loud noise and what appeared to be arguing.
16. Witness 2 was questioned by applicant 1 and testified that her unit is on the bottom floor, 2 apartments away and she was also awoken from her sleep on the night of 16-

November-2023 due to screaming and banging on the door. Witness 2 stated that she has been residing at the unit for 6 years and has never witnessed this before and she stated that she feels scared now to live there.

17. Witness 3 was questioned by applicant 1 and she described the first incident on 2-November as a lot of commotion. Witness 3 testified that things were thrown out the door, and there was banging and screaming. Witness 3 stated that she has been residing at the unit for 14 years and have never witnessed noise like this before.
18. Witness 3 testified that she did not see anything on 16-November, but she did hear the banging and yelling coming from the unit and she testified that the person screaming from outside the door was the tenant as she recognized her voice. Witness 3 testified that she has never felt this type of nervousness and stress before.
19. Witness 4 was questioned by applicant 1 and she described the incident on 2-November as a racket. Witness 4 stated that her unit is right next to the tenant, and she testified that her wall shook when something was thrown at the wall from the other side. Witness 4 stated that there is continuously above average noise and she do not feel comfortable living there.

Tenant's Position

20. The tenant did not dispute that she has been the cause of some of the noise and disruption within the residence. The tenant testified that on 2-November she had an argument with her mom who was rather upset due to personal reasons, and she threw some items that her mom had given her out the front door.
21. The tenant disputes that she was the cause of the disturbance on 16-November and testified that she was asleep at 4:00am when someone came kicking at her door and screaming to get in. The tenant testified that she went to the door and screamed to the person outside to go away and told them that whomever they are looking for don't live here and she stated that the person outside drove away in a white car.

Analysis

22. The notice was served under Section 24, of the *Residential Tenancies Act, 2018*, which states:

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.

23. 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(a) Peaceful enjoyment and reasonable privacy- 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.

24. The tenant was given a termination notice on 16-November-2023 to vacate the premises on 27-November-2023. This meets the timeline of “not less than 5 days after the notice has been served” as set out in section 24 of the *Act*. The termination notice meets the timeline requirements of the *Act*.

25. Based on the landlord’s testimony and the testimony of 4 witnesses, I accept that the tenant is responsible for interfering with the peaceful enjoyment of the other tenants who reside at the premises. The tenant did not dispute that she was the cause of a disturbance on 2-November. The tenant did however dispute that she caused or participated in the disturbance on 16-November. The tenant maintained that a random person in a white care came to her door at 4:00am and was screaming and banging on the door. The tenant testified that she was scared and did not open the door. The tenant stated that the person at her door fit her description and as such, was mistaken for her. The tenant testified that when she told the person at the door that she was going to call the RNC, the person stumbled to the white car and left the premises.

26. Witness 1 testified that she saw the tenant outside her unit at 4:00am on 16-November banging on the door and screaming to get in. Witness 1 also testified that the white car that the tenant was referring to was actually in the parking lot since 5:00pm that day. The tenant, in her defense during her cross examination of witness 1 stated that the person who was banging on her door was the same size as her and fit her description and she stated that the person at the door was probably looking for the occupants who resided at the unit before she moved in. The tenant stated that the banging was going on for an extended period because she was asleep in the back room and did not initially hear the banging.

27. In weighing the evidence, I give more weight to the testimony of the witnesses especially witness 1 who was actually outside the unit during the disturbance on 16-November. Witness 1 contradicted the testimony of the tenant and was confident that her view of what happened that night was untrue. The other 3 witnesses did not see the tenant banging on the door on 16-November, but they did testify to the continuous increased noise levels on the premises and shared how they now have feelings of nervousness and stress while residing at the premises. The tenant did not dispute that she was the cause of the disturbance on 2-November, and I accept the witness’s testimony that she was also the cause of the disturbance on 16-November. For this reason, I find that the tenant contravened statutory condition (7)(a) as stated above and unreasonably interfered with the rights and peaceful enjoyment of other tenants on the property of which they form a part.

28. In accordance with the *Residential Tenancies Act, 2018*, I find that the respondent has contravened statutory condition 7(a) as set out in subsection 10(1) as stated above. As such, the termination notice meets the requirements of the Act and is a valid notice.

29. I find that the tenant should have vacated the premises by 27-November-2023.

Decision

30. The landlord's claim for an order for vacant possession of the rented premises succeeds.

31. The tenant shall vacate the premises immediately.

32. The 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.

Summary of Decision

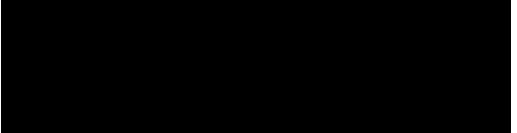
33. The tenant shall vacate the premises immediately.

34. The 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.

35. The landlord will be awarded an Order of Possession.

December 5, 2023

Date


Pamela Pennell
Residential Tenancies Office