

Residential Tenancies Tribunal

Application 2024-0221-NL

Decision 24-0221-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:00 AM on 8 April 2024 via teleconference.
2. The applicant, [REDACTED], was represented by [REDACTED], hereinafter referred to as “the landlord”, attended the hearing and offered testimony. The landlord called a witness, [REDACTED], hereinafter referred to as “the witness”. The landlord also offered written evidence signed by two tenants of [REDACTED].
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, attended the hearing and offered testimony. The tenant did not call any witnesses; however, did have a support person present from [REDACTED].

Preliminary Matters

4. The landlord submitted an affidavit (**Exhibit L # 1**) with her application stating that the tenant was served via registered mail on 22 March 2024 ([REDACTED]). The tenant did not dispute receipt of the Application for Dispute Resolution.
5. The landlord is seeking an order of eviction and an order of possession of property of the rental address and reimbursement for hearing fees.
6. The landlord did not amend her application during the hearing.

Issues before the Tribunal

7. The landlord is seeking the following:
 - An order for vacant possession of the rented premises; and
 - Hearing Expenses of \$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 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, with her application, provided a copy of the written monthly rental agreement (**Exhibit L # 2**) which presents the tenant as moving in to the one-bedroom apartment at [REDACTED] on 1 February 2024. The monthly rent which is due on the first of each month, is \$605.00 and includes hot water. There was a security deposit collected on this tenancy on 12 January 2024 in the amount of \$300.00.
11. The landlord stated shortly after the tenant moved in, other tenants in the apartment building had started contacting her in regards to noise, yelling and screaming of the tenant. She testified she had contacted the police on two separate occasions to conduct a wellness check on the tenant in relation to noise of the tenant. In response to those situations, the landlord stated she sent correspondence, dated 19 February 2024, to the tenant indicating her concerns (**Exhibit L # 3**).
12. 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. Along with her application, the landlord provided two signed written statements of other tenants in the building (**Exhibit L # 4**).
13. The landlord stated after speaking with the tenant about noise concerns, the tenant had informed her he had lost his cellular telephone which upset him. She testified after this issue was rectified, the tenant continued to be disruptive to the apartment building. With her application, the landlord supplied audio records of the tenant in a verbally escalated state (**Exhibit L # 5**).
14. The landlord issuing the tenant termination notice on 12 March 2024, via a process server, to vacate the property by 18 March 2024 (**Exhibit L # 6**).
15. The landlord had a witness who offered testimony at the hearing. The witness described his apartment as being next to the tenant's apartment. He stated he had often been awoken from yelling and screaming of the tenant and the witness testified the police had last been at the tenant's apartment at 5:20 AM on 6 April 2024 due to noise.

16. The witness expressed concerns with the mental health for himself and other tenants due to the noise, yelling, screaming and flagrant language of the tenant at all hours of the day. He stated he was reluctant to have visitors to his apartment due to the possibility of excessive noise, yelling and screaming of the tenant.
17. The witness stated it was very common for him to be awoken in the evenings and early hours by the tenant.

Tenant Position

18. The tenant did not dispute that he received the Application for Dispute Resolution or the termination notice as suggested by the landlord. The tenant stated he also received correspondence from the landlord about noise complaints and he testified this was due to his frustration with previously losing his cellular telephone.
19. The tenant testified police had been at his apartment on multiple occasions due to noise complaints. He stated during the hearing, "I made a little noise, but I was inside my apartment. I lost my phone, then I got an eviction notice, they called the police on me, I was making noise. I don't want to live in the building anymore".

Analysis

20. 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:*

...

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.

21. I accept the testimony of the landlord that the tenant's actions are having a negative impact on the peaceful enjoyment of other tenants of [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 other tenants, also express concerns with their peaceful enjoyment of the apartment building.

22. 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.
23. 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 # 6**), I find the notice was served on 12 March 2024 with a termination date of 18 March 2024. 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.
24. The tenant and landlord both did not dispute that there were noise complaints, the police had responded to those complaints on multiple occasions and that the termination notice was issued. While the tenant did not feel he was provided 5 clear days due to the St. Patrick's Day holiday, as noted above, the appropriate timelines in the *Act* have been met.

Decision

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

Issue 2: Hearing Expense- \$20.00

26. The landlord offered evidence of the application fee (**Exhibit L # 7**) and was seeking compensation.
27. I find the landlord's claim for hearing expense fee succeeds in the amount of \$20.00.

Decision

28. The landlord's claim for hearing expenses succeeds in the amount of **\$20.00**.

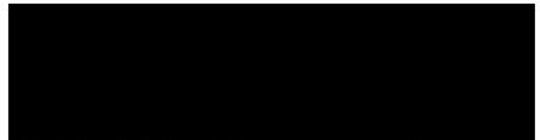
Summary of Decision

29. The landlord's is entitled to the following:
 - An order for vacant possession of the rented premises.
 - \$20.00 Hearing expense.

- 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

03 May 2024

Date



Michael J. Reddy
Residential Tenancies Office