

Residential Tenancies Tribunal

Application: 2024 No. 344NL

Decision 24-0344-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:09 AM on 25 April 2024 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the tenant”, was also in attendance.

Issues before the Tribunal

3. The landlord is seeking an order for vacant possession of the rented premises.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 10 and 24 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

6. The landlord called the following witness:
 - [REDACTED] (“[REDACTED]”) – the landlord’s spouse

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

7. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenant commencing 16 February 2024. The agreed rent was set at \$1250.00 per month.
8. The rental unit is a lower-level apartment located at street level, and the landlord, along with his spouse and 8-year child, live in the unit directly above the tenant.
9. The landlord stated that shortly after the tenant moved in, several issues arose concerning the tenancy. He stated that the tenant, or a guest the tenant had permitted in the rental property, had been smoking in the unit, and he had to request that he stop. The landlord also claimed that the tenant was required to have the electricity account placed in his name when he moved in, and he had to repeatedly remind the tenant about this obligation. He also claimed that the tenant had asked him for a loan of money.
10. Of particular concern to the landlord, however, was the amount of foot-traffic in and out of the tenant's unit. The landlord claimed that hundreds of people had visited the tenant's unit since March 2024, and he testified that on one night in particular, between midnight and 8:00 AM, 40 different people went in and out of the tenant's unit. In support of that testimony, the landlord submitted 86 video clips from a security camera showing these comings and goings.
11. The landlord testified that these visitors to the tenant's unit can be heard in these video clips talking about drugs, or asking the tenant if he has drugs to sell, and in some clips these visitors can be seen using drugs. The landlord even stated that on several occasions people had come to his door, instead of the tenant's, asking if he had drugs to sell. The landlord also recounted an incident where a woman came to his door, with no shoes on, and claimed that the tenant had stolen her wallet.
12. The landlord also complained that some of these visitors have been involved in loud altercations, and at the hearing he read a transcript of a "murderous rant" he had captured on the video camera in which one of the tenant's visitors can be heard bragging about committing murder.
13. Because of these sorts of incidents, the landlord stated that he has had to call the police on numerous occasions, sometimes several times on the same day. He testified that the police advised him to move to a new location, for his safety, until he was able to have the tenant removed through this eviction process.
14. ■■■, the landlord's spouse, corroborated the landlord's testimony and described a few other incidents as well. She stated that there were a few occasions where some of the tenant's visitors had tried to enter their backyard, she stated that she had witnessed other visitors peering through the windows at the property, and she claimed that others had been tampering with the security camera that they had installed. She also testified that she had witnessed one of the tenant's

visitors crushing pills on the wall outside of their house—the same wall that her daughter would sometimes draw on with chalk.

15. ■■■ also recounted some conversations she had heard the tenant's visitors having. In some of these conversations, these visitors are discussing drug dealing and selling, and in others they discuss the presence of the police in the neighbourhood and the past crimes they have committed.
16. ■■■ testified that she has had to call the police on several occasions as well.
17. The landlord stated that the issues that both he and ■■■ had complained about have had a significant impact on his family's quiet and peaceful enjoyment. He stated that he has had to install a security camera at the unit, as advised by the police, to monitor the traffic in and out of the tenant's unit, and he claimed that he is now working from home exclusively to ensure that nothing happens to his property.
18. The landlord also claimed that it was no longer safe to use the front door to his house and he stated that he can no longer enjoy his front step for eating meals or reading, as he had previously done before the tenant moved in.
19. Both the landlord and ■■■ also expressed concern for their 8-year-old daughter's well-being given what she has been exposed to since the tenant moved in. The landlord pointed out that he has had to have conversations with her about illegal drug-use, domestic violence, and sex-work, and ■■■ is fearful that she will be exposed to drugs or drug paraphernalia if she plays in her yard or around their house. They both testified that her daughter is fearful and that she now refuses to sleep alone, and the landlord claimed that they no longer eat meals in their kitchen, located on the first floor, and instead eat upstairs to shield their daughter from witnessing the activity outside the tenant's unit.
20. Because of all these issues, the landlord issued the tenant a termination notice on 18 April 2024, and a copy of that notice was submitted with his application. That notice was issued under section 24 of the *Residential Tenancies Act, 2018*, and it had an effective termination date of 24 April 2024.
21. The tenant has not moved out as required and the landlord is seeking an order for vacant possession of the rented premises.

The Tenant's Position

22. The tenant acknowledged that he had received the termination notice on 18 April 2024.
23. However, the tenant argued that the landlord's telling of what had been taking place at his unit was exaggerated, over-the-top, and highly inflammatory. He acknowledged that there is a lot of traffic in and out of his unit, but he explained that this was merely because he had a lot of friends. He also pointed out that he

works as a counsellor at The Gathering Place, and that some of the people who visit his apartment have addiction problems or mental health issues. He argued that although interacting with people with these sorts of challenges may put the landlord outside of his comfort zone, there is nothing “bad” about allowing these people to visit his unit.

24. With respect to the issue of drug use, although the tenant admitted that he is a drug addict, and that some of his guests have addiction problems, he denied that he was selling drugs out of the rented premises or that any of his guests had been selling drugs there either. He also argued that he has no control over what people do after they leave his apartment, and if they happen to engage in drug use or if they try to enter the landlord’s backyard, he cannot be held responsible for those actions. He also pointed out that there are a large number of people in neighbourhood in which the rental unit is located who are suffering from addiction and mental health issues.
25. With respect to the individual who had engaged in the “murderous rant” transcribed by the landlord, the tenant stated that he did not know who that person was, and he surmised that he is suffering from some sort of mental health issue. Likewise for the shoeless woman who knocked on the landlord’s door—the tenant stated that she had been experiencing a mental health crisis, and had been chasing the tenant in the streets. He denied that he had stolen that woman’s wallet and claimed that she had made up that story to get the tenant in trouble.
26. The tenant claimed that he has had recently taken steps to address the landlord’s complaints, and he stated that the traffic in and out of his apartment has since died down, and he testified that he has no intention of letting anyone in his unit who is unsafe.
27. The tenant stated that he has no desire to reside at the rental premises any longer than he has to, but he argued that if he isn’t given adequate time to find a new apartment, he may end up in a homeless shelter which he believes will negatively impact on his well-being.

Analysis

28. Statutory condition 7, set out in section 10 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.

According to section 24:

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.

29. I found the testimony of the landlord to be credible and believable, and I accept his claim that there has been a significant amount of traffic, in and out of the tenant's unit, throughout the day and night since he had moved into the property. That claim was corroborated by the landlord's video evidence and by his witness, ■■■. I also find it probable that these visitors to the tenant's apartment are engaging in drug-use. That finding is also corroborated by the some of the submitted videos and by the landlord's witness's testimony and is also bolstered by the fact that the tenant himself admits that he is a drug addict, and that some of his guests suffer from addiction issues as well.
30. Additionally, I accept the landlord's corroborated claim that guests of the tenant are entering, or attempting to enter, his yard, that others have tampered with his security camera, that some have been peering through windows, and that some others have come to his unit seeking to purchase drugs.
31. I also accept the landlord's testimony that this activity at the unit has been having a negative impact on his family's quiet and peaceful enjoyment of their home. Both the landlord and MG have testified that they have had to modify their family routines in order to avoid any interaction with the tenant's guests and they both

expressed concern for their daughter's well-being.


32. Given these findings, I conclude that the landlord was in a position, on 18 April 2024, to issue the tenant a termination notice under this section of the Act.
33. As the notice meets all the requirements set out here, it is a valid notice.

Decision

34. The landlord's claim for an order for vacant possession of the rented premises succeeds.
35. 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.

26 April 2024

Date



John R. Cook
Residential Tenancies Tribunal