

Residential Tenancies Tribunal

Application 2024-0683-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 2:02 p.m. on 26-August-2024.
2. The applicants, [REDACTED] (applicant 1) and [REDACTED] (applicant 2), hereinafter referred to as "the landlords", attended by teleconference.
3. The respondents, [REDACTED] (respondent 1) and [REDACTED] (respondent 2), hereinafter referred to as "the tenants", attended by teleconference.

Preliminary Matters

4. The landlords submitted 2 affidavits with their application stating that they had served the tenants individually with the notice of hearing electronically by email to: [REDACTED] and [REDACTED] on 14-August-2024 (LL#1). The respondents confirmed receipt of the documents on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There is a written term rental agreement which commenced on 1-November-2023. The respondents reside in the basement apartment and the landlords reside in the main of the unit. Rent is \$1200.00 per month, due on the first of each month. A security deposit of \$600.00 was paid on 16-October-2023 and is in the landlord's possession.
6. In accordance with Section 11-2 of the *Residential Tenancies Policy Manual*, exhibits submitted by the applicants in the form of a *USB drive* will not be entered into evidence as respondent 1 did not receive a copy of the USB drive prior to the hearing.

Issues before the Tribunal

7. The landlord is seeking:
 - 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*. Also, relevant and considered in this decision is the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory

Conditions and Section 24; Notice where tenant contravenes peaceful enjoyment and reasonable privacy.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions

9. The landlords submitted a copy of a termination notice that was given on a *Landlord's Notice to Terminate Early – Cause* form (LL#2). The notice was issued to the tenants on 22-July-2024 under Section 24; *Notice where tenant contravenes peaceful enjoyment and reasonable privacy* to vacate on 28-July-2024.

Landlord's Position

10. The landlords testified that the tenants have continuously interfered with their peaceful enjoyment and reasonable privacy. The landlords testified to specific events that have taken place since February 2024 as follows:

February 19 – Applicant 1 testified that she could hear arguing between respondent 2 and her ex-boyfriend which continued the entire day, and she stated that their voices were very loud, and the event was rather disturbing to her. Applicant 1 testified that respondent 1 threw the ex-boyfriend out of the unit around 12:20 am and she stated that she called at 12:24 am out of concern for respondent 2. Applicant 1 stated that this incident interfered with her husband's ability to get up for work at 6:30 am.

February 20-25 - Applicant 1 testified that the next 5 days consisted of continuous disturbances by the respondents in the form of arguing, loud noises and doors banging. Applicant 1 stated that on the 20th, her husband banged on the floor in an attempt to alert them that they were too loud and as a result, respondent 1 came up to their unit in an irate manner. Applicant 1 testified that on that day, applicant 2 was working from home and witnessed firsthand what had been happening during the workday and he sent a text message to respondent 2 addressing the escalation of the noise and informed the tenants that it is difficult to work with the continuous disturbances. Applicant 1 testified that their attempts to address the noise concerns did not work as the arguing and noise continued all day on the 21st. Applicant 1 testified that there were people in the driveway at 3:22am on the 23rd and the main door to the apartment was slammed several times waking them from their sleep.

July 10 – Applicant 1 testified that she heard screaming and what appeared to be someone being banged up against a wall. Applicant 1 testified that respondent 2 was screaming: "stop █ stop" and applicant 1 stated that she was fearful for respondent 2's life. Applicant 1 stated that she tried to enter the unit to check on respondent 2 at which time respondent 1 prohibited her from entering.

July 19 - Applicant 1 testified that the situation deteriorated, and she stated that respondent 1 confronted them about becoming involved in his personal business. Applicant 1 stated that respondent 1 came to their front door shirtless ringing their doorbell and screaming profanity into the ring doorbell. Applicant 1 testified that respondent 1 was arrested by the *Police* at the property on that day for an incident not related to the disturbances and she testified that she did not call the *Police* to the premises on that date.

July 22 – The landlords gave the tenants a termination notice.

August 7 – Applicant 1 testified that there was excessive arguing and screaming on this day, and things escalated to the point where she felt the need to contact the *Police* out of concern for the health and safety of respondent 2 which resulted in a 6-hour standoff with 10 *Police Officers* and a dog at their property.

August 8 – Applicant 1 testified that respondent 1 arrived back at the unit when he wasn't permitted to do so which made them nervous resulting in a contravention of their peaceful enjoyment and reasonable privacy. Applicant 1 testified that she called the *Police* on that day.

In addition to the sworn events as stated above, the landlords testified that their lives have been turned upside down with not only the continuous arguing and noise and *Police* presence on the property but with people coming back and forth all hours of the night. The landlords stated that applicant 1 works from home and she had to move her home Office from downstairs to a room upstairs where the noise was not as prevalent. In addition to the noise that continuously disturbs them, the landlords testified that there is an ongoing odor of cannabis entering their unit through the ventilation system and applicant 1 stated that their rental agreement is clear that cannabis use is forbidden within the unit.

Tenant's Position

11. The tenants disputed most claims made by the landlords and respondent 1 stated that the landlords were great to them in the beginning, and they had a cordial relationship. Respondent 1 stated that things changed when the *Police* first arrived at the premises on 19-July due to an issue unrelated to peaceful enjoyment and the landlords learned of his past. Respondent 1 stated that the landlords are liars, and he accused them of wanting the unit vacant for their daughter who was moving home at the end of July and he testified that he had conversations with them whereby the landlords advised them that they could break the lease and leave early. Respondent 1 stated that they have never received any noise complaints from the landlords, and he stated that applicant 1 provided him with the code to her house after February so he could get a key to his unit.
12. With regards to the various incidents as stated by the landlords, the tenants did not dispute the incident on 19-February and respondent 1 stated that the disturbance on that date was caused by the ex-boyfriend and never happened again. Respondent 1 testified that applicant 1 was responsible for the *Police* presence at the premises as he claimed that she made all the calls. Respondent 1 did not dispute that he is loud and stated that his voice is loud by nature, and he stated that the walls are paper thin whereby he can also hear the landlords when they talk. Respondent 1 also stated that respondent 2 has a hearing disability which requires him to speak louder than normal. Respondent 1 disputed ever harming respondent 2 and testified that on 10-July there was screaming from respondent 2 as she accidentally got pinned to the wall when assisting him to move a bureau. Respondent 1 did not dispute that there are comings and goings late at night, however he stated that he works as a painter at night and sometimes leaves after work to pick up his groceries at the 24 hr Sobeys. Respondent 1 testified that there is a problem with the outside door which prevents it from shutting easily resulting in a banging motion to ensure it shuts properly and he testified that the landlords are well aware of the door issue. With regards to the use of cannabis in the unit, respondent 1 testified that cannabis has never been used in the unit but rather outside in a designated area. Respondent 2 did not speak during the hearing until I asked her if the incident on 10-July involved a bureau and she responded that it did and she stated that although there are arguments between her and respondent 1 from time to time, she is not a victim of domestic violence.

Analysis

13. Statutory conditions under Section 10(7)(a) of the *Residential Tenancies Act, 2018* states:

Peaceful Enjoyment and Reasonable Privacy

7(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.

14. The termination notice was given on 22-July-2024 under Section 24; *Notice where tenant contravenes peaceful enjoyment and reasonable privacy* to vacate on 28-July-2024. The termination date was given not less than 5 days after the notice was served which meets the requirements as set out in the *Act*. I find that the termination notice is a valid notice from a timeline perspective but has to be further analyzed for validity (see below).
15. The landlords testified to several incidents which interfered with their peaceful enjoyment, reasonable privacy, their inability to work from home and their inability to sleep at night ranging in dates from February to July. The landlords testified that those incidents consisted of arguing, screaming, doors banging, people coming and going all hours of the night, cannabis use within the unit and *Police* presence on the property. I accept the testimonies given under oath by the landlords and I gave the tenants an opportunity to respond to each claim made by the landlords.
16. I accept that the incident on 19-February was instigated by the ex-boyfriend, nevertheless the incident interfered with the peaceful enjoyment of the landlords. I accept that respondent 2 has a hearing disability and respondent 1 has to speak loudly, however I also accept that the landlords know the difference between a normal conversation as opposed to heated arguments. Nevertheless, the continuous noise and banging interfered with the peaceful enjoyment of the landlords. I accept that the basement door doesn't shut easily and needs an extra push, however that is no reason to slam the door to the point where it wakes the landlords during the night. I asked applicant 2 if he was aware of the door issue and he responded that the door needs an extra tug and testified that the banging of the door all hours is not necessary. I accept that respondent 1 works late at night and comes and goes during the early morning hours, however his comings and goings should not interfere with the sleep of the landlords. I accept the testimony of respondent 2 that the incident on 10-July did not involve domestic violence, nonetheless there was screaming and banging that interfered with the peaceful enjoyment of the landlords. I accept the landlord's testimony that the tenants use cannabis in the unit as it would be difficult to misjudge the odor associated with cannabis use.
17. I accept that the landlords were willing to break the lease and allow the tenants to leave early so their daughter could move in, however I do not accept that the landlords fabricated the events as outlined in paragraph 10 to benefit themselves. There have been numerous incidents since February which have disrupted the landlords lives in one way or another and both landlords and tenants have the right to live in a peaceful environment whereby, they can work from home if required and rest easily at night.

18. In accordance with Section 10(7) (a) as stated above, I find that the tenants have unreasonably interfered with the rights and reasonable privacy of the landlords who reside within the same residential premises. I find that the termination notice given on 22-July-2024 is a valid notice.

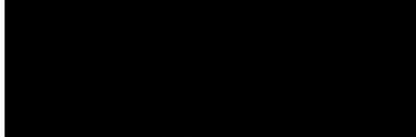
19. I find that the tenants should have vacated the unit on 28-July-2024.

Decision

20. The landlord's claim for vacant possession of the rented premises succeeds.

August 30, 2024

Date


Pamela Pennell, Adjudicator
Residential Tenancies Office