

Residential Tenancies Tribunal

Application 2022-No.616-NL

Decision 22-0616-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 10-August-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” did not attend.
4. The landlord presented a witness, [REDACTED], hereinafter referred to as “the witness,” she attend by teleconference.

Preliminary Matters

5. The tenant was not present or represented at the hearing and I was unable to reach her by telephone at the start of the hearing. 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 she has been properly served. The landlord submitted an affidavit (LL#01) with his application stating that he had served the tenant with notice of the hearing, in person on 24-July-2022. The landlord amended this affidavit to state that he actually served in person on 28-July-2022 and that the first date was an error. 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.

Issues before the Tribunal

6. The landlord is seeking vacant possession of the rental premises.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions and Section 24: Notice where a tenant contravenes peaceful enjoyment and reasonable privacy.

Issue 1: Vacant Possession of the Rental Premises

Landlord's Position

9. The landlord said he has a verbal rental agreement with the tenant. He said she moved in with a roommate about 6 years ago. This past February the roommate moved out and the tenant remained as the sole occupant. He said they have a monthly agreement and she pays \$600.00 the first day of each month. He said she did not pay a security deposit.
10. The landlord said that the rental unit is the upstairs in a two story house. He said that another tenant lives downstairs with her children. The downstairs tenant moved in March 2022.
11. The landlord said that there have been complaints from the downstairs tenant ever since she moved in. The landlord said that the police attend the unit regularly. There was recently a report of a gunshot connected to the tenant's apartment. He has been told that the tenant is possibly a prostitute and that this might be the reason for the ongoing activity. He said that he has had reports from the neighbors and the downstairs tenant that there is always activity, people, noise and fighting all hours of the day and night coming from the apartment.
12. The landlord called the downstairs tenant as a witness. She said that no one should be expected to live the way she is living. She said that there is noise and fighting all hours of the day and night. She said it is an everyday occurrence.
13. The witness said after she first moved in that she had to switch rooms with her son who is 21 years old. She was completely unable to sleep. Her bedroom was directly below where most of the activity takes place. She said her son sleeps more soundly and has a different schedule so he has been sleeping in the room under the most of the activity.
14. The witness said that she works a physical job and needs a full night's sleep. She said she usually goes to bed about 10:00 p.m., but she is awakened every night around 12:00 and that there is noise until about 6:00 a.m. in the morning. She said from 12:00 to 3:00 is the worst of the noise. She said she has been ineffective at work due to the lack of sleep.
15. The witness said in addition to her 21 year old son she has an 8 year old daughter and an 11 year old daughter (who lives there a part of the time). The witness said her 8 year old has been traumatized by the activities upstairs. She said her daughter has her own

room, but she now sleeps with her mother because she is so afraid of the people and noises and fighting coming from upstairs.

16. The witness said that she has had to call the police on occasion. She said that the police come to the house frequently and often knock on her door looking for the people upstairs. She said that when the police come to the house, she can hear them moving around upstairs, but they don't answer the door for the police. She said that the police are there so often that she sees them "at the house more often than the garbage man." She said that they have been there twice in the past two weeks; once due to reports of gunshots.
17. The witness said that this is no way for her and her kids to live. They can't have guests over, especially the kids, because it is too unpredictable and potentially violent. She is hoping that the landlord's claim succeeds.
18. The landlord said that although he doesn't live in the unit, he did do the renovations on the downstairs unit before the witness moved in. He said that there was constant noise and traffic at the apartment. He said that the police have also contacted him due to issues with the upstairs apartment and he has provided them with the tenant's contact information.
19. The landlord submitted a termination notice (LL#02), it is on a landlord's notice to terminate early – cause form, for interference with peaceful enjoyment and reasonable privacy. The form is signed and dated for 14-June-2022 with a termination date of 21-July-2022. The landlord said he served this in person on 14-July-2022. He said that it is dated for 14-June-2022 but he actually signed and served the notice on the 14-July-2022.

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 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.

(b) The landlord shall not unreasonably interfere with the tenant's reasonable privacy and peaceful enjoyment of the residential premises, a common area or the property of which they form a part.

21. 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 the tenant”. Peaceful enjoyment may include, but is not limited to the following: (i) excessive noise; (ii) aggressive or obnoxious behaviour; or (iii) threats and harassment.
22. I accept the testimony of the landlord and the witness that there has been excessive traffic and noise at the tenant’s apartment. The witness’ testimony concerning the impact on her children and the interference with her sleep are a clear indication that the tenant and her guests are interfering with the right of the witness and her family to peacefully enjoy their home.
23. The landlord’s termination notice is dated for 14-June-2022 with a termination date of 21-July-2022. The landlord indicated that he also put the wrong date on the termination notice, he had intended for it to be dated for 14-July-2022. This error doesn’t impact the validity of this notice. I accept that the landlord served the tenant with the notice on 14-July-2022 and the service on that date does meet the requirement of not less than 5 days’ notice; as shown in Section 24, of the *Residential Tenancies Act, 2018*, below:

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.

24. I find that the tenant is interfering with the rights of the witness who lives in the apartment below, I also find that the notice served by the landlord is a valid notice and was served in accordance with the *Act*. The tenant should have moved by 21-July-2022.

Decision

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

Summary of Decision

26. The landlord's claim for an order for vacant possession succeeds.
27. The tenant shall vacate the premises immediately.
28. The tenant shall pay to the landlords 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.

August 11, 2022

Date



Jacqueline Williams, Adjudicator
Residential Tenancies Office