

Residential Tenancies Tribunal

[REDACTED] Decision 19-200-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:05 pm on 08 April 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". The respondent, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing and he was represented by [REDACTED]
[REDACTED].

Issues before the Tribunal

3. The landlord is seeking the following 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* and David Mullin's Administrative Law, 3rd ed. (Carswell, 1996).

Issue 1: Vacant Possession of the Rented Premises

Relevant Submissions

The Landlords' Position

6. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenant with the tenant on 01 December 2018 and a copy of the executed lease was submitted at the hearing ([REDACTED] #1). The agreed rent is set at \$725.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$545.00.
7. The landlord stated that he had received a written complaint from another resident at the complex, [REDACTED], on 04 February 2019 and a copy of that complaint was submitted at the hearing ([REDACTED] #4). In that letter, [REDACTED] complained that the tenant had been violently beating on his door and had threatened to kick it in if he would not answer. [REDACTED] also writes that the tenant had been demanding that he give him things and he claimed that the tenant had threatened his girlfriend.
8. As a result of that complaint the landlord issued the tenant a warning letter on 06 February 2019 ([REDACTED] #3). In that letter, the landlord describes the complaints that [REDACTED] had made against him and he states that if he receives any additional complaints he may be required to issue the tenant a short, 5-day termination notice.
9. The landlord stated that, to the best of his knowledge, after the warning letter was issued the tenant's behaviour did not get any better. He stated that although he received no further written complaints from [REDACTED], he claimed that his resident manager continued to receive verbal complaints from him.
10. Because the complaints continued, the landlord served the tenant with a termination notice on 05 March 2019 ([REDACTED] #2). That notice was issued under section 24 of the *Residential Tenancies Act, 2018* (notice where tenant contravenes peaceful enjoyment and reasonable privacy) and it had an effective termination date of 11 March 2018.
11. The landlord stated that the tenant has not vacated the rental unit as required and he is seeking an order for vacant possession of the rented premises.

The Tenant's Position

12. The tenant denied that he had been banging on [REDACTED] door as had been recounted in the submitted letter. He claimed that [REDACTED] had likely made these false allegations against him as he no longer provided him with transportation to his doctor.
13. The tenant acknowledged receiving the warning letter on 06 February 2019 but he claimed that there had been no other complaints made against him since that date and he stated that he had received no other warning letters from the landlord.
14. The tenant testified that he had been in contact with the landlord's resident manager about the warning letter and he had also requested that she carry out

some repairs to his unit. He claimed that the resident manager had been very rude to him.

15. The tenant also complained that there are other residents at the complex who have also been banging on his door and making threats against him.

Analysis

16. 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.

and according to section 24 of this Act:

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.

17. In order for the landlord's claim for an order for vacant possession of the rented premises to succeed, he must establish, on the balance of probabilities, that the tenant had indeed been unreasonably interfering with the peaceful enjoyment of [REDACTED] or other residents in the complex.
18. I accept the landlord's evidence which shows that he had received 1 written complaint about the tenant and I also accept his claim that the resident manager had informed him that [REDACTED] had made further verbal complaints about the tenant's behaviour.
19. However, these statements about what [REDACTED] had reported to the landlord and the landlord's resident manager amount to no more than hearsay. The question is not whether the landlord had received a complaint from [REDACTED] about the tenant, but, rather, whether those complaints are warranted or justified. Neither [REDACTED] nor the landlord's resident manager were called as witnesses to give any first-hand testimony to establish the truth of those complaints and the tenant testified that these allegations were false.
20. Although this Tribunal is not bound by the rules of evidence found in our courts (cf. s. 46.(2)(c) of the *Residential Tenancies Act, 2018*), it would be unfair and a violation of the principles of natural justice to allow the tenant to be evicted based on these unfounded complaints alone. As David J. Mullan states in Administrative Law:

§163 Even though it is not bound by the strict rules of evidence, a tribunal may only act upon legally cogent evidence. Although an administrative tribunal may admit hearsay evidence, basing a finding which has serious consequences exclusively on hearsay and opinion evidence may still amount to a denial of natural justice or procedural fairness.

21. For this reason, the landlord's claim does not succeed.

Decision

22. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

10 April 2019

Date

[REDACTED]
John R. Cook
Residential Tenancies Tribunal