

Residential Tenancies Tribunal

Decision 19-0782-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 am on 31 October 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate in the hearing.

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, 20 and 24 of the *Residential Tenancies Act, 2018* and David Mullin's Administrative Law, 3rd ed. (Carswell, 1996).

Preliminary Matters

6. The tenant was not present or represented at the hearing and there was no telephone number where he could be reached. 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) a respondent 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 he has been properly served. The landlord submitted an affidavit stating that the tenant was personally served with notice of the hearing on 07 October 2019 and he has had 23 days to provide a response. 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 his absence.

Issue 1: Vacant Possession of the Rented Premises

Relevant Submissions

7. The landlord stated that she had entered into 1-year, fixed-term lease with the tenant on 01 April 2019 and a copy of the executed rental agreement was submitted with her application (█ #1). The agreed rent is set at \$675.00 and it is acknowledged in the lease that the tenant had paid a security deposit of \$337.50.
8. The landlord stated that in July 2019 she started receiving complaints from the tenant's neighbours about his conduct and the goings on in his apartment.
9. The landlord stated that the tenant's unit is a bachelor apartment, intended for 1 person, and that according to the lease, the tenant must first get the landlord's written permission to keep pets. She stated that in July 2019 she started receiving complaints that two women had moved in with the tenant and he has also been keeping 2 dogs in the unit.
10. She also stated that she had received complaints about noise coming from the tenant's unit. She stated that there have been reports of arguments being heard at night and the other residents have complained that the tenant had been moving furniture at 2:00 am.
11. The landlord also stated that there have been reports that the tenant had been knocking on the doors of other residents at the complex asking for money and cigarettes. She also stated that the people who know the tenant are coming around the complex and knocking on windows of the other residents seeking to be let into the complex.
12. In response to these complaints, the landlord had issued the tenant 6 separate warning letters between 15 July and 18 September 2019 (█ ##3-8).
13. On 30 September 2019 the landlord issued the tenant a termination notice and a copy of that notice was submitted at the hearing (█ #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 06 October 2019.

14. The landlord stated that the tenant has not vacated as required and she is seeking an order for vacant possession of the rented premises.

Analysis

15. 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.

16. The evidence submitted at the hearing establishes that the landlord had been receiving complaints from other residents at the complex about the behaviour of the tenant and it also establishes that the landlord had issued notices to the tenant about those complaints.
17. I was not convinced, however, that this evidence is sufficient for an award for vacant possession of the rented premises.
18. Firstly, some of the complaints the landlord had noted were that the tenant had allowed two women to move in with him and that he is keeping two pet dogs at the unit without the consent of the landlord. If true, these are breaches of section 6 of the rental agreement and section 19 of the attached Schedule "A" of that agreement (Landlord's Rules and Regulations).
19. But where a tenant commits a breach of the rental agreement, the landlord is required to give a 1-month termination notice under section 20 of the *Act* (notice where material term of agreement contravened) if the tenant fails to comply with a notice to remedy the breach. A 5-day notice under section 24 of the *Act* is inappropriate in these circumstances.
20. Secondly, although I accept the landlord's claim that she had been receiving complaints about the tenant, she has failed to establish that those complaints are true. Her testimony about what the other residents at the complex had complained to her about amounts to no more than hearsay. The landlord did not call these other residents as witnesses to provide a first-hand account of what had been taking place at the complex or to give any evidence to establish that the tenant's behaviour had been interfering with their peaceful enjoyment.
21. 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.

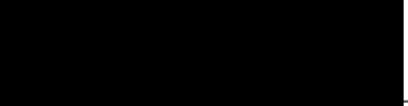
22. For these reasons, the landlord's claim does not succeed.

Decision

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

06 November 2019

Date



John R. Cook
Residential Tenancies Tribunal