

## Residential Tenancies Tribunal

[REDACTED] Decision 19-0951-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 11:15 am on 27 January 2020 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, 24 and 42 of the *Residential Tenancies Act, 2018*.

### Preliminary Matters

6. The tenant was not present or represented at the hearing and there was no telephone number available 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.

7. The landlord testified that she had sent the notice of the hearing to the tenant by registered mail on 23 December 2019 and she submitted a copy of the tracking history at the hearing. That tracking history shows that 2 notice cards were left for the tenant indicating that the notice was available for pick-up at the Post Office, but it was never collected by the tenant.
8. Section 42 of the *Residential Tenancies Act, 2018* states:

***Application to director***

***42. (1) A landlord or tenant may, within one year after termination of the rental agreement, apply to the director to determine***

- (a) a question arising under this Act or the regulations;***
- (b) whether a provision of a rental agreement has been contravened; or***
- (c) whether a provision of this Act or the regulations has been contravened.***

***(2) An application under subsection (1) shall be submitted to the director in the form and with the fee set by the minister.***

***(3) The applicant shall serve the application submitted to the director under subsection (2) by***

- (a) giving it personally to the other party;***
- (b) sending it to the other party by prepaid registered mail or prepaid express post at an address provided by the other party;***
- (c) sending it electronically where***
  - (i) it is provided in the same or substantially the same form as the written notice or document,***
  - (ii) the other party has provided an electronic address for receipt of documents, and***
  - (iii) it is sent to that electronic address; or***
- (d) sending it to the other party by courier service at an address provided by the other party.***

...

*(6) For the purpose of this section, where a copy of the application is sent by registered mail or express post, it shall be considered to have been served on the fifth day after mailing, and the service may be proved by providing evidence that the copy of the application was prepaid and properly addressed and sent.*

9. Although the tenant never did receive notice of the hearing, as it was sent by registered mail on 23 December 2019, he is considered to have been served on 28 December 2019. 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.
10. The landlord called the following witness:
  - [REDACTED] ("[REDACTED]") – caretaker at rental complex

## **Issue 1: Vacant Possession of the Rented Premises**

### **Relevant Submissions**

11. The landlord stated that she had entered into a rental agreement with the tenant in September 2013. The current rent is set at \$810.00 and the landlord stated that the tenant had paid a security deposit of \$572.00.
12. The landlord stated that since April 2019 she has been receiving numerous complaints about the behaviour of the tenant. She stated that 2 different residents in the complex had been complaining about noise coming from the tenant's unit and they informed her that they had heard screaming and yelling coming from the tenant's unit as well as banging sounds.
13. As a result of these complaints, the landlord's caretaker visited the unit on 02 May 2019 and again on 09 May 2019. On both occasions, the landlord stated that the caretaker confirmed that there were loud noises coming from the tenant's unit. And according to an "On Call Report" submitted by the landlord ([REDACTED] #6), on 02 May 2019 the tenant was abusive and threatening towards the caretaker.
14. According to the "On Call Report" from 09 May 2019 ([REDACTED] #9), the caretaker reported that the furniture in the tenant's apartment appeared to be destroyed. The report also indicates that the tenant had threatened to harm himself and as a result, the police were called and the tenant was arrested.
15. Because of these complaints, the landlord had issued the tenant 2 separate warning letters, one on 25 April 2019 and one on 09 May 2019, and copies of those letters were submitted with the landlord's application ([REDACTED] #5, #10).
16. The landlord also submitted 2 "Incident Preliminary Flash Reports" from 19 November 2019 ([REDACTED] #11) and 20 November 2019 ([REDACTED] #13). Both reports were compiled by the landlord's superintendent as a result of fires which had occurred

in the tenant's apartment on those dates. In both cases, the tenant had been cooking on his stovetop and had then fallen asleep. As a result, the food he was cooking caught fire and smoke filled his apartment and made its way into the hallway. According to these reports, the tenant had informed the superintendent that he had fallen asleep because of new medications he had been prescribed.

17. These reports also indicate that there was significant damage caused to the tenant's apartment. In support of that claim, the landlord submitted 12 photographs that were taken of the tenant's apartment in November 2019 (█ #14). These photographs show that there are numerous large holes in the walls throughout the apartment.
18. The landlord's superintendent, █, was called as a witness. He corroborated the landlord's claim that she had been receiving complaints about the tenant and he stated that he had personally responded to these complaints himself and had visited the tenant's unit approximately 20 times.
19. He testified that he had personally heard loud music and noise coming from the tenant's unit. He also claimed that he had witnessed the tenant beating up his furniture in his apartment and that he had witnessed him punching holes in the walls in the unit.
20. █ also complained that the tenant had broken out a window in his apartment and that he had on one occasion took his entry door off the hinges to his apartment. █ had to reinstall that door himself.
21. █ also corroborated the landlord's claim that the tenant had twice fallen asleep while cooking, causing there to be smoke in his room and in the hallways in the complex.
22. The landlord stated that several residents of the complex had already moved out because of the behaviour of the tenant and she stated that he is continuing to disturb the quiet and peaceful enjoyment of the other residents in the complex. She also stated that she is fearful for the safety of the tenants in the complex and is concerned that the tenant may cause a serious fire.
23. Because of all of these issues and concerns, the landlord issued the tenant a termination notice on 20 November 2019 and a copy of that notice was submitted with her application (█ #3). 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 26 November 2019.
24. The landlord stated that the tenant has not vacated the rental unit as required and she is seeking an order for vacant possession of the rented premises.

## Analysis

25. 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.**

26. I accept the landlord's testimony and the testimony of her witness in this matter. Based on that testimony and based on the other evidence submitted at the hearing, I find that the tenant had been responsible for numerous loud disturbances at the unit, including the playing of loud music in the early hours of the morning and the sounds of the tenant's furniture and walls being damaged.

27. I also accept the landlord's claim that the behaviour of the tenant is disturbing the other resident's at the complex and that several residents have already moved out because of that behaviour. Accordingly, I conclude that the tenant has not been complying with statutory condition 7(a), quoted above, and the landlord was in a position, on 20 November 2019, to issue the tenant a termination notice under section 24 of the Act.
28. As the termination notice meets the timeframe requirements set out in this section and as it was properly served, it is a valid notice.

### **Decision**

29. The landlord's claim for an order for vacant possession of the rented premises succeeds.
30. 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.

### **Issue 2 – Hearing Expenses**

31. The landlord submitted a hearing expense claim form and a receipt for \$20.00 for the costs of filing this application and a receipt showing that she had paid \$13.11 to send the notice of the hearing to the tenant by registered mail.
32. As the landlord's claim has been successful, the landlord is authorized to retain \$33.11 of the security deposit.

31 January 2020

Date

  
John R. Cook  
Residential Tenancies Tribunal