

Residential Tenancies Tribunal

Decision 20-0042-03

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:06 pm on 01 September 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate.

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 and 24 of the *Residential Tenancies Act, 2018*, Rule 29 of the *Rules of the Supreme Court, 1986* and David Mullin's Administrative Law, 3rd ed. (Carswell, 1996).

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach her by telephone. 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 she has been properly served. The landlord submitted an affidavit stating that the tenant

was served with notice of the hearing, by e-mail, on 15 August 2020 and she has had 15 days to provide a response. The landlord also submitted a copy of that e-mail as well as copies of previous correspondence he had had with the tenant at that e-mail address. 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.

Issue 1: Vacant Possession of the Rented Premises

Relevant Submissions

7. The landlord stated that he had entered into 1-year, fixed-term lease with the tenant on 01 June 2019. The agreed rent is set at \$800.00 and the landlord stated that the tenant had paid a security deposit of \$600.00.
8. The landlord stated that he had been receiving numerous complaints about the tenant from her neighbours and as well from the tenant in the adjoining apartment at the complex.
9. The landlord stated that a neighbour had complained to him that on one occasion someone had walked into her home, without notice, seeking a payment of drug money. He stated that whoever this person was had gone to the wrong address looking for the tenant.
10. He also stated that the neighbours have complained to him that there are people coming and going from the tenant's apartment at all times of night and day and he has been informed that the tenant's boyfriend had moved into the unit and was selling drugs.
11. The landlord also stated that the occupant in the adjoining apartment that he rents had complained about screaming, yelling and a general racket that can constantly be heard coming from the tenant's apartment. That resident also complained that the tenant has been putting her cats out onto roof of the adjoining apartment at night and she can hear them tracking back and forth all night long.
12. The landlord stated that because of these complaints he had issued her a termination notice on 04 August 2020 and a copy of that notice was submitted with his application. 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 August 2020.
13. The landlord stated that the tenant has not vacated as required and he is seeking an order for vacant possession of the rented premises.

Analysis

14. 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.

15. I accept the landlord's claim that he had been receiving complaints from the tenant's neighbours and from the occupant in the adjoining apartment.

16. I was not convinced, however, that this evidence is sufficient for an award for vacant possession of the rented premises.

17. First of all, I will address the complaints the landlord had received from the tenant's neighbours. Even if those complaints were well founded, any complaint about unreasonable interference with the peaceful enjoyment of an individual who is not the landlord or is not another tenant in the same complex or shared property is not a violation of statutory condition 7(a). That statutory condition only states that a 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." This section of the Act does not cover the rights of neighbours with whom the landlord does not have a landlord-tenant relationship with.
18. Secondly though, the landlord's testimony about what the tenant's neighbours and the other resident at the complex had complained to him about amounts to no more than hearsay. That is, the only evidence submitted by the landlord at the hearing were his statements about what other people had told him. The landlord did not call these individuals as witnesses to give 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.
19. 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.

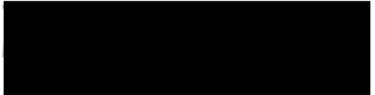
20. For these reasons, the landlord's claim does not succeed.

Decision

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

02 September 2020

Date


John R. Cook
Residential Tenancies Tribunal