

Residential Tenancies Tribunal

[REDACTED] Decision 20-0057-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:05 am on 19 February 2020 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing. The respondent, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord".

Issues before the Tribunal

3. The tenant is seeking a determination of the validity of a termination notice issued to him on 03 February 2020.

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*.

Preliminary Matters

6. The landlord called her superintendent, [REDACTED] ("[REDACTED"]"), as a witness.

Issue 1: Validity of Termination Notice

Relevant Submissions

The Landlord's Position

7. The landlord and tenant entered into a monthly rental agreement on 29 November 2019 and a copy of that executed agreement was submitted at the hearing (█ #1). The rental unit is one of numerous apartments in an apartment building.
8. The landlord stated that at around 4:45 am on 03 February 2020, early Monday morning, there was a loud disturbance in the tenant's apartment and in the hallway. She testified that she was not at the complex when this incident happened, but when she did arrive there later that day, she stated that she was greeted with complaints from multiple other residents in the complex.
9. The landlord stated that she reviewed the surveillance footage in the complex and she saw that there the tenant was in an altercation with a friend of his. She stated that the footage shows that the tenant's friend had thrown him out of his apartment and they then began fighting in the hallway. She stated that there is no audio with the footage, but she stated that it is obvious that they are yelling at each other. The tenant and his friend can then be seen chasing each other in the hallway and the tenant then locks himself in his room. At that point, his friend can be seen on the video repeatedly kicking the door.
10. A copy of the surveillance footage was submitted and played at the hearing.
11. The landlord also called her superintendent, █, as a witness. █ was at the complex when this altercation took place and he repeated the landlord's description of what was shown on the video.
12. █ stated that he could hear a racket in the hallway and a lot of loud arguing and shouting and he claimed that the tenant's friend had been "taking swipes" at the tenant.
13. █ testified that he confronted the tenant about the issue and he was assured by him that he "would take care of it". █ stated that he was not going to allow that behaviour to continue and that if it had continued he would have called the police.
14. The landlord stated that she received numerous complaints about that altercation and she claimed that some residents at the complex were very frightened by it. She also pointed out that the incident took place around 5:00 am on a Monday, when many of the residents were trying to sleep and were expected to go to work that day.

15. Because of this incident, the landlord issued the tenant a termination notice on that same day and a copy of that notice was submitted with the tenant's application (████ #1). 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 10 February 2020.

The Tenant's Position

16. The tenant stated that the person shown in the video was his cousin and had been staying with him temporarily.
17. The tenant acknowledged that a disturbance had taken place at the rental unit, but he claimed that it happened in the early hours of Saturday morning, 01 February 2020.
18. The tenant also denied that he had been fighting with his cousin. Rather, he stated that his cousin had a seizure and he claimed that when he woke from his seizure he "went crazy."
19. The tenant stated that this was the first time he had encountered someone having a seizure and he did not know how his cousin was going to react. He claimed that this was the reason he could be seen in the video running in the hallway.
20. The tenant testified that he did not recall being thrown out of his apartment by his cousin and he denied that they had been fighting or throwing punches at each other.
21. In support of his claim that his cousin had had a seizure, the tenant submitted into evidence a doctor's note which reads:

This is a medical note to state that ██████████ was assisting a friend with a medical emergency at his residence on Friday, 31 January 2020.

22. The tenant argued that as he was dealing with a legitimate medical emergency, his behaviour on that morning cannot be considered to be unreasonable interference and the termination notice issued to him is therefore not valid.

Analysis

23. 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.

24. The video evidence submitted by the landlord shows that the tenant's cousin had pushed him out of his apartment and then tried to punch him. He then chases the tenant down the hallway and it looks as if he is yelling at the tenant. Shortly after, the tenant runs back into his apartment, locking out his cousin, who then starts kicking the door.
25. I don't accept the tenant's claim that this incident occurred on 01 February 2020 and the preponderance of the evidence establishes that it occurred on 03 February 2020. The landlord and her witness testified that it occurred on that date and the video is dated 03 February 2020, at 5:38 am.
26. But whether this occurred on 03 February 2020, which seems more probable, or on 01 February 2020, as the tenant contended, the tenant's doctor's note, which indicates that the tenant was helping a friend with a medical emergency on 31 January 2020, does not support his claim that what was shown in the submitted video surveillance was related to his cousin having a seizure.

27. Accordingly, I do not accept the tenant's contention that he was dealing with a medical emergency that morning, and it seems more probable that, for whatever reason, he was in a violent argument with his cousin in the early hours of the morning in his apartment. That argument eventually spilled into the hallway as shown in the video footage.
28. That sort of behaviour is unreasonable, especially given that the rental unit is located in an apartment building with numerous other residents who would have been exposed to that noise and arguing.
29. I also accept the landlord's claim that this incident was interfering with the peaceful enjoyment of the other residents in the complex. According to her testimony several residents informed her that they were fearful while others were woken early on a day when they were required to go to work.
30. Accordingly, I find that because of this incident the landlord was in a position to issue the tenant a 5-day termination notice under this section of the *Act*.
31. As the notice meets the timeframe requirements set out in this section of the *Act* and as it was properly served, it is a valid notice.

Decision

32. The termination notice issued to the tenant on 03 February 2020 is a valid notice.

03 March 2020

Date

John R. Cook
Residential Tenancies Tribunal

