

## Residential Tenancies Tribunal

Decision 20-0216-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 10:45 am on 09 June 2020 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". The respondent, Isaac Anderson, 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* and David Mullin's Administrative Law, 3<sup>rd</sup> ed. (Carswell, 1996).

### Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach him by telephone from the hearing room. 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) respondents 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

testified that the tenant was served with notice of the hearing, by courier, on 29 May 2020 and he has had 10 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 a 1-year, fixed-term rental agreement with the tenant on 01 April 2019 and a copy of the executed lease was submitted with her application. The agreed rent is set at \$800.00 per month and the tenant had paid a security deposit of \$600.00.
8. The landlord stated that the tenant's unit is adjacent to another apartment, occupied by [REDACTED], and they share a common entranceway. The landlord stated that she has received numerous complaints from [REDACTED] about the behaviour of the tenant.
9. She testified that [REDACTED] complained that the tenant is a drinker and he is often intoxicated. She also stated that [REDACTED] told her that when the tenant is drinking he will often fall down and that he does not obey the social distancing regulations that had come into effect since the onset of the COVID-19 pandemic.
10. The landlord also claimed that the [REDACTED] had informed her that the tenant smokes and [REDACTED] is fearful that the tenant may accidentally catch the apartment on fire while he is intoxicated.
11. Because of these complaints, and out of concern for [REDACTED], the landlord issued the tenant a termination notice on 05 May 2020 and a copy of that notice was submitted with her 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 May 2020.
12. The landlord stated that the tenant has not vacated the rented premises as required and she is seeking an order for vacant possession.

### **Analysis**

13. 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.***

14. In order for the landlord's claim for an order for vacant possession of the rented premises to succeed, she must establish, on the balance of probabilities, that the tenant had indeed been unreasonably interfering with the peaceful enjoyment of [REDACTED].
15. Although I accept the landlord's claim that [REDACTED] had been making complaints about the behaviour of the tenant, that evidence amounts to no more than hearsay.
16. 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. But [REDACTED] was not called as a witness to give any first-hand testimony to the Board to establish the truth of those complaints.

17. 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.*

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

### **Decision**

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

11 June 2020

Date

John R. Cook  
Residential Tenancies Tribunal