

Residential Tenancies Tribunal

Decision 20-0272-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:10 pm on 11 August 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The tenant, [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* and rule 29 of the Rules of the Supreme Court, 1986.

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 testified that she had sent the claim and

notice of the hearing to the tenant, by e-mail, on 16 July 2020 and a copy of the e-mail was submitted with her application. The tenant has had 25 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 her absence.

7. The landlord called the following witnesses:

- [REDACTED] ("[REDACTED]") – neighbour residing at [REDACTED]
- [REDACTED] ("[REDACTED]") – tenant residing at [REDACTED]

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

8. The landlord stated that she had entered into a month-to-month rental agreement with the tenant on 15 July 2018 and a copy of an Intent to Rent Letter was submitted with her application. The agreed rent was set at \$800.00 per month and the landlord stated that it was paid on the tenant's behalf by Newfoundland Labrador Housing and the Department of Advanced Education, Skills and Labour.
9. The rental unit at [REDACTED] is a main floor apartment and the landlord also rents out the basement apartment beneath the tenant's unit ([REDACTED]). That basement apartment is currently occupied by her daughter ([REDACTED]) and her daughter's spouse. They moved in on 15 February 2020.
10. Prior to 15 February 2020, the occupant of the basement apartment had made several complaints to the landlord about the amount of visitors coming to the tenant's apartment and he had also complained about the accompanying noise. This lead to him terminating his agreement with the landlord.
11. After [REDACTED] moved into that apartment, the landlord stated that she started receiving the same sorts of complaints. The landlord stated that [REDACTED] and [REDACTED] had informed her that there is a constant stream of visitors showing up at the tenant's unit at all hours of the night and they have been causing a lot of disturbances, resulting in several police visits.
12. The landlord also stated that she had been speaking to the tenant after she had received these complaints and the tenant informed her that these visits all have to do with illegal drug use.
13. [REDACTED] was called as a witness. She testified that since early April 2020, the tenant has been having a large amount of people visit her unit every night. She claimed that people would start showing up at the tenant's apartment around 9:00 pm and there would be constant traffic until about 8:00 am the following day. [REDACTED] stated

that it was busiest between 2:00 am and 5:00 am and she claimed that these visits are short and typically only last between 5 and 15 minutes.

14. █ complained that the tenant's visitors are oftentimes very loud and she testified that she had to call the police on 3 or 4 occasions because she could hear screaming and yelling coming from the tenant's unit. █ stated that because of all this noise she has not been able to get any sleep in the evenings and she even complained that the noise has been affecting the mental well-being of her pet dogs.
15. █ also stated that she suspected that there was illegal drug activity taking place at the tenant's apartment and that this was part of the reason the tenant was having so many people visit her unit each night. She claimed that she had found wrappers for syringes on her property and she also claimed that the tenant's mother had told her that the tenant was going to use a "flush kit" to conceal the fact that she was taking drugs.
16. █ also recounted an incident one night when the tenant's visitors had been shining flashlights into her apartment windows.
17. █ is a neighbour of the tenant and he was called as a witness as well. He gave an account similar to that given by █ about what had been happening at the tenant's apartment. He corroborated her claim that the tenant has been having a lot of visitors coming and going late at night and through the early hours of the morning. He complained that these visitors are very noisy and that police have had to be called on numerous occasions.
18. █ also stated that there is a heightened sense of insecurity in the neighbourhood since the tenant started allowing these visitors into her apartment and he claimed that there has been an increase in property theft in the area. He stated that he has become so concerned that he has had security cameras installed at his house.
19. █ also complained that, like █, he has not been able to get much sleep in the nights because of the noise and disturbances that can be heard coming from the tenant's apartment.
20. Because of these complaints, the landlord issued the tenant a termination notice on 01 June 2020 and a copy of that notice was submitted with the landlord's 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 30 June 2020.
21. 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

22. 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.

23. I found the uncontested testimony of [REDACTED] and [REDACTED] to be credible and believable and I find it probable that the tenant had been allowing numerous, loud visitors to enter her apartment late at night and into the early hours of the morning. I also find it probable that these visits have been so disruptive that the police have had to be called on numerous occasions.

24. Allowing that sort of behaviour to occur at the rental unit is unreasonable and inconsiderate on the part of the tenant, especially considering that [REDACTED] is residing directly beneath her in the basement apartment. I accept [REDACTED]'s claim that that unreasonable behaviour has been very disturbing to her and is greatly impacting her quiet and peaceful enjoyment of her apartment. As such, I find that the landlord was in a position on 01 June 2020 to terminate the tenancy under section 24 of the *Residential Tenancies Act, 2018*.
25. As the termination notice meets the timeframe requirements set out in this section of the *Act*, it is a valid notice.

Decision

26. The landlord's claim for an order for vacant possession of the rented premises succeeds.
27. 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.

17 August 2020

Date

[REDACTED]

John R. Cook
Residential Tenancies Tribunal