

Residential Tenancies Tribunal

Decision 20-0291-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:09 am on 23 September 2020 via teleconference.
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.

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*.

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 registered mail, and a copy of the tracking history shows that it was delivered to him on 09 September 2020. He has had 13 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.

7. The landlord called the following witnesses:

- Constable [REDACTED] ("[REDACTED]"), Royal Newfoundland Constabulary (RNC), badge # [REDACTED]
- [REDACTED] ("[REDACTED]"), resident manager at the residential complex

Issue 1: Vacant Possession of the Rented Premises

Relevant Submissions

8. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant on 01 November 2019 and a copy of the executed lease was submitted with her application. The agreed rent is set at \$795.00 per month and the tenant had paid a security deposit of \$596.00.
9. The landlord's witness, [REDACTED], stated that he received a telephone call from his 70 year old sister, at 5:20 pm on [REDACTED], informing him that the tenant had barged into their apartment and he was yelling and cursing.
10. [REDACTED] stated that he went to the apartment and the tenant was upset that [REDACTED] was unable to immediately provide him with a replacement key to the complex. He testified that the tenant continued to curse and yell and he had pushed his sister so that she had almost fallen over.
11. [REDACTED] testified that he had asked the tenant to leave his apartment 3 separate times, and after the third time asking, he was assaulted by the tenant. He stated that the tenant was punching and kicking him and all he could do was block the tenant's blows. [REDACTED] stated that he finally got the tenant out of his apartment and the tenant left the scene.
12. After this incident, [REDACTED] contacted the RNC and Cst. [REDACTED] arrived at this apartment and took his statement.
13. Cst. [REDACTED] was called as a witness. He testified that he was called to the residential complex on [REDACTED] and took a statement from [REDACTED] concerning the tenant's assault on him. He stated that he also took a statement from a person who witnessed the altercation. Cst. [REDACTED] also testified that that he observed injuries on [REDACTED] as a result of the assault.
14. Cst. [REDACTED] stated that based on the evidence he collected on that visit, he determined that there were grounds for a criminal code charge against the tenant and he stated that he had requested a warrant for the arrest of the tenant.

15. ■ also stated that he is pressing criminal charges against the tenant and he also stated that he had a hearing whereby he had requested a peace bond against the tenant.
16. The landlord stated that because of this incident, on 29 June 2020 she issued the tenant a termination notice 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 06 July 2020.
17. The landlord stated that the tenant has not vacated the rented premises as required and she is seeking an order for vacant possession.

Analysis

18. 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.*

19. I accept [REDACTED]'s testimony concerning the incident that happened on [REDACTED]. Physically assaulting an employee of the landlord, especially when unprovoked, is clearly unreasonable behaviour. I agree with the landlord that that sort of unreasonable behaviour is an infringement on the rights of her employees to work in a safe, hazard-free environment and I agree with her that it is a violation of statutory condition 7, quoted above.

20. Accordingly, I agree with the landlord that she was in a position, on 29 June 2020, to issue the tenant a termination notice under section 24 of the *Residential Tenancies Act, 2018*. As the notice meets all the requirements set out in that section of the *Act*, it is a valid notice.

Decision

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

22. 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

23. The landlord submitted a receipt showing that she had paid \$20.00 to file this application as well as a receipt for \$14.88 for the costs of serving the tenant with notice of this hearing by registered mail.

24. As the landlord's claim has been successful, she shall retain \$34.88 of the security deposit as compensation for her hearing expenses.

Summary of Decision

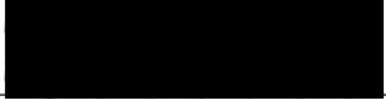
25. The landlord is entitled to the following:

- An order for vacant possession of the rented premises,
- 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,

- The landlord is authorized to retain \$34.88 of the security deposit.

23 September 2020

Date


John R. Cook
Residential Tenancies Tribunal