

Residential Tenancies Tribunal

Decision 21-0036-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 am on 29 March 2021 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 him 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 he has been properly served. The landlord submitted an affidavit with her application

stating that she had personally served the tenant with notice of the hearing on 04 February 2021 and he has had 52 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 Rented Premises

Relevant Submissions

7. The landlord stated that she had entered into a month-to-month rental agreement with the tenant on 14 December 2020. The agreed rent was set at \$800.00 per month and the landlord testified that the tenant had paid a security deposit of \$400.00.
8. The rental unit is a basement apartment and the landlord also rents out the upstairs unit. That upstairs unit is occupied by [REDACTED] and [REDACTED] and they have been residing there for the past 11 years.
9. The landlord stated that she has been receiving continuous complaints from [REDACTED] and [REDACTED] about the tenant since he moved into the unit. She stated that there have been complaints of loud noise coming from the tenant's unit at all hours of the night and early morning and [REDACTED] and [REDACTED] told her that there are people constantly coming and going from the unit and that he frequently would have several people staying at the unit with him. [REDACTED] and [REDACTED] have also complained that the tenant is smoking in his unit and that the smell of cigarette smoke is entering their unit.
10. The landlord stated that [REDACTED] and [REDACTED] have been very much disturbed by the behaviour of the tenant and they had reported to her that they have been having difficulty sleeping because of the noise. They also have had to call the police on several occasions.
11. In support of her claim, the landlord read aloud a letter she received from [REDACTED] in which she outlines the issues that have been taking place at the unit since the tenant moved in.
12. The landlord also stated that she had visited the unit on a couple of occasions after she had received these complaints and she testified that she felt threatened by the tenant and his guests.
13. She recounted one incident where she had arrived at the unit to talk to the tenant about the complaints she had received and she stated that there were 6 or so men in the apartment with the tenant and she claimed that they were all drunk or high on drugs. She stated that the tenant lunged at her on that occasion and she felt threatened.

14. On another occasion, after giving the tenant a 24 hours notice that she would be entering the apartment, she was confronted by a guest of the tenant who also lunged at her and had to be held back by some other guests in the apartment. She testified that this guest yelled at her and said that "she had no right to be in the apartment". She also testified that this guest then told her that she had COVID-19 and proceeded to cough on her. She also complained that she was prevented from leaving the apartment by another guest of the tenant until the police arrived.
15. Because of these issues, the landlord issued the tenant a termination notice on 18 January 2021 and a copy of that notice was submitted with her application. That notice was issued under section 24 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 24 January 2021. The landlord stated that the tenant has not vacated as required and she is seeking and order for vacant possession of the rented premises.

Analysis

16. 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.*

17. The landlord's evidence concerning the complaints that she had received from [REDACTED] and [REDACTED] is hearsay evidence and I afford it little weight.
18. However, I do accept the landlord's claim that she had visited the unit on several occasions and that the tenant and his guests were confrontational and acted in a threatening manner. I also accept the landlord's testimony concerning the fact that the police had to visit the unit on several occasions.
19. I agree with the landlord that this sort of antisocial behaviour is unreasonable and that it had been interfering with her right, as a landlord, to safely enter her rental property and to conduct inspections. I also agree with her that the tenant's behaviour and the behaviour of her guests was intimidating and that she had felt fearful.
20. Because of those incidents described by the landlord, I find that she was in a position, on 18 January 2021, to issue the tenant a termination notice under this section of the Act. As that notice meets all the requirements set out in this 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.

07 April 2021

Date

[REDACTED]
John R. Cook
Residential Tenancies Tribunal