

Residential Tenancies Tribunal

[REDACTED] Decision 21-0202-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 am on 17 June 2021 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". 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 the tenant had been personally served with notice of the hearing on 27 May 2021 and he has had 20 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:

- [REDACTED] ("[REDACTED]") – tenant in unit [REDACTED]
- [REDACTED] ("[REDACTED]") – superintendent at the residential complex

Issue 1: Vacant Possession of 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 January 2020 and a copy of the executed lease was submitted with her application ([REDACTED] #1). The agreed rent is set at \$745.00 and it is acknowledged in the lease that the tenant had paid a security deposit of \$367.60.
9. The rental unit is an apartment in a 3 building complex. The landlord stated that she had been receiving complaints about loud noises coming from the tenant's unit from [REDACTED] who lives in an apartment directly below the tenant's. [REDACTED] was called as a witness.
10. [REDACTED] stated that she moved into her apartment in March 2021 and since then she claimed that she has had to make about 10 separate complaints about the noise coming from the tenant's unit. She claimed that since she moved into the unit, the tenant would frequently start playing his music loudly in his apartment, at around 9:00 or 10:00 pm, and that it would continue through to the morning of the following day.
11. [REDACTED] stated that that noise is interfering with her quiet enjoyment of her apartment and she is having a hard time sleeping. She also complained that the tenant had come around to her unit on a couple of occasions after she had made these complaints, but she refused to answer her door as she was scared.
12. [REDACTED], the superintendent at the complex, was also called as a witness. She testified that she had received one complaint, on 13 April 2021, about the noise coming from the tenant's unit and she paid him a visit at about 12:30 am. She stated that when she went to his apartment, she could hear loud noise coming from that unit and she complained that the tenant was drunk and murmuring when she informed him that she had been receiving complaints. After a brief discussion with him, [REDACTED] testified that the tenant stated "I've had enough of this" and then slammed the door in her face.
13. The landlord stated that she had been receiving similar complaints about the noise coming from the tenant's unit for several months and she pointed out that

she had issued him several warning letters since September 2020. Copies of those letters were submitted with her application (█ #2).

14. Despite these warnings, the landlord stated that she continued to receive complaints about the noise and on 22 April 2021 she served the tenant with a termination notice. A copy of that notice was submitted with her application (█ #3). That notice was issued under section 24 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 29 April 2021.
15. 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 witnesses testified that the tenant has been continuously playing loud music in his apartment in the late hours of the night and despite the landlord's repeated warnings, that behaviour has not improved.

18. I accept [REDACTED]'s claim that the noise coming from the tenant's apartment is interfering with her quiet and peaceful enjoyment of her apartment. I also find that the tenant's persistent playing of loud music at these hours is unreasonable, especially given that his unit is adjacent to several other apartments in the complex and also given that this complex is predominately occupied by seniors.

19. Because of the tenant's continuous, unreasonable behaviour, I find that the landlord was in a position, on 22 April 2021, to issue the tenant a termination notice under this section of the Act.

20. 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.

Issue 2: Hearing Expenses

23. The landlord paid a fee of \$20.00 to file this application. As the landlord's claim has been successful, she is authorized to retain \$20.00 of the security deposit to cover that expense.

18 June 2021

Date

[REDACTED]
John R. Cook
Residential Tenancies Tribunal