

Residential Tenancies Tribunal

Application [REDACTED]

Decision 19-375-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:20 am on 05 June 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
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 in the hearing.

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) 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 a 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. With her application the landlord submitted an affidavit stating that the tenant was personally served with notice of the hearing on 15 May 2019 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] – former resident at rental complex

Issue 1: Vacant Possession of the Rented Premises

Relevant Submissions

8. The landlord stated that she had entered into 1-year, fixed-term rental agreement with the tenant on 01 July 2016 and a copy of the executed lease was submitted with her application ([REDACTED] #1). The agreed rent is set at \$840.00 and it is acknowledged in the lease that the tenant had paid a security deposit of \$630.00.
9. The rental unit is in an apartment complex and there are 4 apartments on each floor. The tenant resides in unit 103.
10. The landlord stated that there have been ongoing issues with the tenant for quite some time. She stated that she suspects there is illegal drug activity taking place in the tenant's unit and she reported that she had discovered syringes outside of his window.
11. She also complained that the tenant has numerous visitors coming and going from his unit and she stated that these visitors are very disruptive. She testified that she has witnessed these visitors on numerous occasions loitering outside the main door to the complex or outside of the tenant's apartment. She claimed that she has seen these people kicking and banging on the main door and the door to the tenant's apartment and they would often be yelling for the tenant to allow them into the unit.
12. The landlord submitted into evidence 3 warning letters that had been sent to the tenant concerning these matters ([REDACTED] ##3-5).
13. The landlord also reported that on one occasion she visited another resident, [REDACTED], who lived in unit 102, right across the hall from the tenant's apartment. She stated that on that occasion she saw a woman leave the tenant's apartment and get into a fist-fight with another woman who had just left unit 101.
14. The landlord stated that [REDACTED] was frightened because of the behaviour of the tenant and his guests and she eventually was moved to another complex as a result.

15. The landlord also submitted into evidence 5 incident reports concerning complaints that she that she had received from [REDACTED] [REDACTED] ##6-10) concerning the noise coming from the tenant's apartment and concerning the tenant's visitors constantly banging on doors and yelling out for the tenant. [REDACTED] [REDACTED] was called as a witness.
16. She reported that people had been knocking on her door and window looking to get into the complex and claimed that these same people would then be calling out for the tenant. She stated that if the tenant was not at home, these people would sit on the floor, wait about 30 minutes, and then would start knocking on the doors again and calling out for the tenant.
17. [REDACTED] also reported that on 28 April 2019 the tenant had physically thrown a woman out of his apartment and she then had gotten into an altercation with someone in the hallway. She testified that she telephoned the Royal Newfoundland Constabulary (RNC) about that matter and they spoke with the tenant and warned him not to disturb the other residents at the complex.
18. [REDACTED] stated that this was not the first time she had telephoned the police because of the tenant's disruptive behaviour and the landlord submitted into evidence a list of complaints provided to her by the RNC ([REDACTED] #11) showing that she had telephoned them on 5 separate occasions between October 2018 and April 2019 about noise, suspicious persons and excessive foot traffic.
19. [REDACTED] also stated that the tenant and his guests were aware of the fact that it was her who had called the police and they were angry with her for doing so. She stated that on one occasion, after the police had departed, the tenant ran up to her and told her "to go f*** herself" and he "gave her the finger".
20. [REDACTED] also recounted an incident which occurred on 05 May 2019. She testified that she recorded 35 separate times on that day that someone either entered or departed the tenant's apartment. She also stated that on that date she heard a gunshot coming from the tenant's unit.
21. [REDACTED] stated that residing in an apartment next to the tenant had been "a nightmare" and she felt afraid of the guests who were always coming and going to the tenant's unit. She stated that she was afraid to leave her unit at times and she frequently had to close her blinds and turn off her lights so that these guests would think she was not at home.
22. As a result of these complaints, the landlord issued the tenant a termination notice on 08 May 2019. 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 14 May 2019.

23. The landlord stated that the tenant has not vacated the rental unit as required and she is seeking an order for vacant possession of the rented premises.

Analysis

24. 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.

25. The testimony given by both the landlord and her witness establishes that there had been numerous disturbances at the complex caused by the tenant or by guests he permits in the complex or his apartment. The landlord's witness

reported that she had seen several fights in the hallway outside her apartment, that the tenant's guests would be yelling outside of her door calling for the tenant and that they would frequently bang on her door or window seeking entry into the complex.

26. I accept the landlord's witness's claim that these repeated disturbances had been interfering with her quiet and peaceful enjoyment of her apartment and given that the rental unit is adjoined and next to 3 other apartments, I find that this sort of behaviour is unreasonable.
27. As the termination notice meets the timeframe requirements set out in s. 24 of the *Act* and as it was properly served, it is a valid notice.

Decision

28. The landlord's claim for an order for vacant possession of the rented premises succeeds.
29. 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

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

14 June 2019

Date


Jo
Residential Tenancies Tribunal