

Residential Tenancies Tribunal

Application [REDACTED]
Application [REDACTED]

Decision 20-0565-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:16 am on 18 February 2021 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord”, participated in the hearing. The respondent, [REDACTED] hereinafter referred to as “the tenant”, also participated in the hearing.

Issues before the Tribunal

3. The landlord is seeking an order for vacant possession of the rented premises.
4. The tenant is seeking the determination of the validity of a termination notice issued to her on 01 December 2020.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case are sections 10 and 24 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

7. The hearing was recessed at 9:32 am and reconvened at 9:50 am. The tenant did not call into the hearing after the recess, as instructed, and I continued with the hearing in her absence.

8. The landlord called the following witness:

- [REDACTED] – tenant at [REDACTED]

Issue 1: Validity of Notice Issued on 01 December 2020

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

9. The landlord stated that he had entered into a 6-month, fixed-term rental agreement with the tenant, commencing 01 June 2020. The agreed rent was set at \$680.00 and the landlord stated that the tenant had paid a security deposit of \$400.00.
10. The rental unit is a basement apartment and the landlord rents out the upstairs unit to [REDACTED] was called as a witness.
11. [REDACTED] testified that she had been living in her apartment for 20 years and she resides there with her husband and 3 children. She stated that she has never had an issue with anyone who had rented the basement apartment until the tenant moved in, and, in particular, she said that things had become much worse during the past 2 months.
12. [REDACTED] stated that the tenant calls the police whenever she hears any noise coming from her apartment, though she denied that she had been making any noise worth complaining about. In addition to calling the police, she stated that the tenant would bang on the walls and ceiling in her unit and would shout obscenities at her. She stated that the tenant was banging on her ceiling with a broom handle and one day she could hear it go through her ceiling so that the broom handle was banging on the underside of [REDACTED] bathtub.
13. [REDACTED] also complained that the tenant was playing music in her apartment so loud that she had to call the police on 4 different occasions. She stated that the police have been at her apartment every single day for the past 2 weeks.
14. Because of these issues, [REDACTED] has sent several written complaints to the landlord about the tenant's behaviour and these were submitted with the landlord's application.
15. Besides the complaints that the landlord had been receiving from [REDACTED] about the tenant, the landlord also complained that the tenant is causing damage to her rental unit. For example, he stated that the tenant has broken one on the kitchen windows with a wooden chair.

16. The landlord also stated that the tenant had been abusing him on social media and that when he speaks to her on the telephone she is also verbally abusive. He also complained about an incident where the tenant went to his home late at night and she was pounding on his door looking for her keys. He testified that he did not want to deal with the tenant at that time and he had to call the police.
17. Because of these issues, the landlord delivered a termination notice to the tenant on 09 December 2020 and a copy of that notice was submitted with his 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 16 December 2020.
18. The tenant has not vacated as required and the landlord is seeking an order for vacant possession of the rented premises.

The Tenant's Position

19. The tenant only participated in part of the hearing. Before the recess, she complained that [REDACTED] and her family were also noisy, that she could hear arguing coming from their unit and she claimed that they were abusing her.
20. The tenant also alleged that [REDACTED] had put surveillance devices in the walls and floors so that they could monitor her.
21. With her application, the tenant submitted a previous termination notice that had been issued to her on 01 December 2020. That notice was also issued under section 24 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 06 December 2020.
22. The tenant is seeking a determination of the validity of that termination notice.

Analysis

23. 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.*

24. Regarding the termination submitted with the tenant's application, I find that it is invalid as it does not meet the timeframe requirements set out in s. 24.(1) of the Act. That section states that a termination notice issued to a tenant must specify a termination date that is "not less than 5 days after the notice has been served". That means that there have to be 5 full, or clear, days between the date the notice is issued and the date the tenant has to vacate. If the notice was issued on 01 December 2020, the earliest termination date it could specify would be 07 December 2020.
25. The second notice, submitted with the landlord's application, and issued on 09 December 2020, is in compliance with the timeframe requirements set out here.
26. I also find that the landlord was in a position, on 09 December 2020, to issue the tenant a notice under this section of the Act as the evidence submitted at the hearing does establish that the tenant had been unreasonably interfering with [REDACTED] and the landlord's peaceful enjoyment.
27. According to [REDACTED] testimony, there is a lot of loud noise coming from the tenant's apartment and she can be heard yelling at [REDACTED] and banging on the ceiling in her unit. [REDACTED] also testified that because of these issues, she has had to call the police on numerous occasions. I find that that sort of behaviour is unreasonable,

especially given that [REDACTED] lives directly above the tenant's apartment and given that there are 3 children living with her. I also accept [REDACTED] testimony that the tenant's behaviour has had a significant impact on her quiet and peaceful enjoyment of her property.

28. As the termination notice issued on 09 December 2020 meets all the requirements set out in this section of the *Act*, I find that it is a valid notice.

Decision

29. The termination notice issued to the tenant on 09 December 2020 is a valid notice.
30. The landlord's claim for an order for vacant possession of the rented premises succeeds.
31. 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.

22 February 2021

Date

[REDACTED]
John R. Cook
Residential Tenancies Tribunal