

Residential Tenancies Tribunal

Application [REDACTED]
Application [REDACTED]

Decision 21-0030-01

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:35 p.m. on 14-October- 2021.
2. The applicant, [REDACTED] hereinafter referred to as “tenant1” attended by teleconference.
3. The respondents and counter applicants, [REDACTED] and [REDACTED] hereinafter referred to as “landlord1” and “landlord2” attended by teleconference
4. The other tenants in the house, attended the hearing and testified on behalf of the landlords; [REDACTED] [REDACTED] hereinafter referred to as “tenant2” and “tenant3”

Preliminary Matters

5. The tenant did not submit an Affidavit showing that she had served the landlords with notification of the hearing. Tenant1 described the manner in which she served the Landlords and Landlord1 raised the issue that the service given by Tenant1 did not give 10 full days’ notice. Landlord1 agreed to waive their right to service to expedite the process. The Landlords submitted their affidavit ([REDACTED] #01) confirming that Landlord2 served Tenant1 in person on October 01, 2021.
6. The rental unit in question has three apartments a house in the front, in the back is a ground floor apartment and a basement apartment. Tenant1 lives in the house, Tenant2 lives in the ground floor apartment and Tenant3 lives in the basement apartment with her partner and two small children.

Issues before the Tribunal

7. The tenant is questioning the validity of the termination notice.
8. The landlord is seeking vacant possession of the property.
9. Both parties are requesting their hearing expenses reimbursed.

Legislation and Policy

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

Issue 1: Vacant Possession of the Rental Premises

Landlord Position

12. The Landlords entered into a verbal rental agreement with Tenant1. Tenant1 took possession on 27-September-2020. The Landlords followed up with a written notice of the rental agreement and submitted this into evidence (█ #02). They were in a month to month rental agreement. Rent was \$850.00 a month with heat and utilities included. Half of the rent was due on both the 1st and 15th of each month. There was a security deposit of \$425.00 paid on 28-September-2020; the landlords are still in possession of the security deposit. The Landlords split the payments of the rent for the convenience of Tenant1 making it due the 1st and 15th of each month to coincide with Tenant1's pay periods.
13. The Landlords had served Tenant1 on three different occasions. Termination Notice 1 (█ #01) is a hand written letter dated August 1, 2021 with a termination date of August 31, 2021. Landlord2 acknowledges that this is not a valid notice and withdraws that notice.
14. Termination Notice 2 (█ #02) is on the Landlord's Notice to Terminate Early- Cause form for failure to pay rent signed on August 7, 2021 with a Termination date of August 17, 2021. Landlord1 said that Tenant1 did pay her half of the rent for August 1, 2021 about 5 days late. When they sent the notice the rent was not in arrears at that time, she withdrew this Termination Notice, but added that Tenant1 has not paid rent since this time.
15. The third Termination Notice (█ #03) is on the Landlord's Notice to Terminate Early-Cause form, for Interference with Peaceful Enjoyment signed by both Landlords on August 19, 2021 with a Termination date of August 26, 2021. Landlord1 stated that this Termination Notice was served personally to Tenant1 by Landlord 2 on August 19, 2021.
16. Landlord1 said that the reason she sent the first notice is, Landlord1 had received a text (█ #03) from Tenant1's former roommate. The text said that she had to move out because she was being treated unfairly and the fighting was too much for her. The roommate said she was being threatened and the apartment isn't a safe environment.
17. Landlord1 said that in May, Tenant1 asked if she could have a roommate to help out with the cost of the rent. Landlord1 met with the roommate and she thought that the new roommate appeared to be a quiet, nice girl; so Landlord1 agreed. The end of July, the landlords received a text from Tenant1's former roommate (█ #03) saying she was leaving and how she was treated by Tenant1. The Landlords were horrified to hear this.

18. The Landlords have been informed by the other tenants that Tenant 1 is very loud in her movements around the apartment. They were told there have been times of loud arguing and fighting. The fights involved throwing things. When Tenant1 was spoken to about her behavior by Landlord1 she would blame her boyfriend, things would then settle for a while but eventually it would then flare up again.
19. Landlord1 says that she has tried on a few occasions to speak with Tenant1 about her relationship and the impact on others in the house. Landlord1 states that Tenant1 is very adamant about her rights, but doesn't recognize her own responsibility in this situation. She said that Tenant1 has become argumentative and talks over them. She has stopped paying rent as of 15 August 2021 and has been difficult to deal with.
20. Landlord1 is concerned that if Tenant1 is allowed to remain living at the house, they will lose the other tenants because of the environment they are having to live in.
21. Landlord1 submitted a document (█#04) it states the experiences of Tenant2 and Tenant3.
22. Tenant2 was called as the first witness, he said the first day that Tenant1 was moving in he witnessed her fighting with her father who was helping her move.
23. Tenant 2 said that there were loud fights between Tenant1 and her boyfriend. The fights have caused him worry about the safety of the people in the apartment. These fights have also spilled out into the streets. Tenant2 has had neighbors question what is going on in Tenant1's part of the house. Tenant2 said Tenant1 has garbage around the front of the house and he hopes it doesn't reflect on him, but understands that the front of the house is the first impression. In addition to the loud noises in the apartment, Tenant1 also plays the music in her car really loud and you can hear her from inside his apartment when she comes down the street or while she is parked in front of the house.
24. Tenant2 says that these noises interrupt the sleep of himself and the neighbors. His inability to get restful sleep impacts his readiness for work.
25. He also reports that he witnessed Landlord1 and Tenant1 speaking and he believes that Tenant1 was trying to intimidate Landlord1.
26. Tenant2 says that during the past two months, since the boyfriend moved, there have been more acceptable levels of noise, in terms of the fighting. There is still noise from the radio when she is coming and going in the car.
27. Tenant3 was called as the next witness, she says that on several occasions she has listened to Tenant1 bang stuff around, scream to the top of her lungs, growling, screaming that she will kill herself and arguing with whoever is there. This could happen anytime during the day or night.
28. Landlord1 is concerned that there is an impact on her children, Tenant3 said she sometimes takes them from the home so that they won't hear the noise. She is concerned because she doesn't want her kids to overhear what has, on times, sounded like someone being murdered.

29. Tenant3 says her children, ages 8 years and 20 months, the children do wave and smile at Tenant1 because they are raised to be friendly and polite, this is not, in her opinion, proof that they aren't being traumatized by the noises that they hear.
30. Tenant3 loves living there, but has considered moving.

Tenant1 Position

31. Tenant1 said she had issues with Termination Notices 1 and 2. Termination notice 1 (█#01) doesn't follow the time lines. Termination Notice 2 (█#02) for late payment of rent was unfair because she always paid her rent whenever she was paid. She has now stopped paying rent because she was waiting for the file to go to a hearing. She says she was feeling threatened by Landlord2.
32. Tenant 1 stated that her former roommate has addiction and mental health issues and that she was trying to help her. They are friends now.
33. Tenant1 reports that she thought she had a good relationship with the other tenants. Tenant3's kids wave at her when they see her and she has shoveled the driveway for Tenant2.
34. Tenant1 acknowledges that she was in an abusive relationship, this relationship is now over and that she has been quiet ever since he left.
35. Tenant1 says that she can hear the other tenants as well, that the house is older and the walls are thin, but she believes that the noise in their homes is only their business and she would never complain about them.
36. Tenant1 said she has only spoke to Landlord1 about the relationship with her ex-boyfriend once. If she was aware it was an issue she would have done something about it.
37. Tenant1 stated that if the other tenants thought she sounded like she was being murdered, she wonders why no one ever called the police to help her.

Analysis

38. The landlords, and all three tenants acknowledge that Tenant1 was involved in an abusive relationship. This relationship was violent and sometimes loud. Although the relationship has ended and Tenant1's apartment has become quieter, at the time of the Notice to Terminate Early- Cause (█#03), given to Tenant1 in August, there were concerns of violence and noise that was impacting Tenant2 and Tenant3 as well as her young family.

39. Statutory condition 7.(a), set out in section 10.(1) of the *Residential Tenancies Act, 2018* states:

i. Statutory conditions

ii. 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:

iii. ...

iv. 7. Peaceful Enjoyment and Reasonable Privacy -

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.

v.

40. Tenant1 has survived a difficult living situation, her trauma and life circumstance is understandably difficult. This, however, is her burden and it is unfair to place this burden on the other tenants in the house. Tenant1's relationship was interfering with the peaceful enjoyment of the other tenant's and this is a violation of their rights.

41. Finally, according to section 24 of this *Act*:

i. Notice where tenant contravenes peaceful enjoyment and reasonable privacy

ii. 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.

1. (2) In addition to the requirements under section 34, a notice under this section shall

b. be signed by the landlord;

c. state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and

be served in accordance with section 35.

42. Termination notice 3 (█#03) was served in person by Landlord2 on the date signed, August 19, 2021. The termination date is for August 26, 2021. This notice follows the requirements of the *Act*, Tenant1 should have moved on or before that date.

Decision

- 41 The landlord's claim for an order for vacant possession of the rented premises succeeds.
- 42 The tenant shall vacate the property immediately.
- 43 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

- 44 The landlord incurred the cost of \$20.00 to file this application and provided the receipt for same (█ #04).
- 45 As the Landlord's claim is successful they are authorized to retain this expense from Tenant1's damage deposit.

Summary of Decision

- 46 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 \$20.00 of the damage deposit.

October 21, 2021

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office