

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0045-02

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 07 February 2022 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED] Peters, hereinafter referred to as “the landlord”, participated in the hearing. The respondent, [REDACTED] hereinafter referred to as “the tenant”, did not attend 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* 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 her 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 his application stating that she had served the tenant with notice of the hearing, by e-mail, on 25 January 2022 and a copy of that e-mail was also submitted with his application. The e-mail address used by the landlord was the one provided by the tenant on her application, [REDACTED]. 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. As the tenant did not attend the hearing to provide any evidence in support of her application, [REDACTED], her claims are dismissed

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

8. The landlord stated that he had entered into a 1-year, fixed-term lease with the tenant, commencing 01 August 2021, and a copy of that executed agreement was submitted with his application ([REDACTED] #1). The agreed rent was set at \$725.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$365.00.
9. The rent unit is located in a 5-unit complex, and the tenant shares the second floor with 2 other apartments, and there are another 2 apartments on the first floor.
10. The landlord stated that he started to receive complaints from the other residents at the complex on the very first day that the tenant moved in. He stated that these residents had reported to him that the tenant had decided to move her possessions and furniture into her second floor apartment at about 1:30 in the morning and that she had caused a lot of noise and woke these other residents from their sleep. He stated that after the tenant moved in he continued to receive complaints about loud noise and music coming from the tenant's apartment and he stated that he has also received complaints that the tenant is smoking her apartment.
11. The landlord also complained that the tenant has guests visiting at all hours of the day and night and that they bang on the common entry door to gain access to the complex. He stated that these visitors disturb the 2 residents who live on the ground floor—one of whom is in a wheelchair. The landlord also indicated that one of the tenant's visitors is known to the police, who have had to visit the complex on numerous occasions, and he suspects that that visitor had tried to break into an apartment on the second floor of the complex.
12. In support of these claims, the landlord submitted a letter from [REDACTED] #2), a home care worker who works out of the complex, who corroborated the complaints the landlord had received. She also reported that the tenant is loud and causing noisy disturbances, that the tenant is smoking in her unit which is disturbing the other tenants in the complex and that the police have had to visit the unit on numerous occasions. [REDACTED] also writes that the tenant is responsible for some damage which had been caused to a shared washing machine.
13. Also, the landlord submitted a text-message exchange that he had had with the tenant in which he writes that he had received her subsidized rent and that he would be willing to return it to her if she had already moved out of her unit. In response, she writes: "You can go fuck yourself [REDACTED]". The landlord also submitted photographs showing the damage caused to the unit by the tenant, as described by [REDACTED].
14. As a result of these complaints, and because of the manner in which the tenant had been dealing with him, the landlord sent the tenant a termination notice, by e-mail, on 16 September 2021, and a copy of that notice was submitted with his application ([REDACTED] #3).

That notice was issued under section 24 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 25 September 2021.

15. The landlord stated that the tenant has not vacated as required and he 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. I accept the landlord's claim that he had been receiving complaints from the residents at the complex about the behaviour of the tenant and her guests. Those reported complaints were corroborated by ■■■ and she writes that the tenant's behaviour had been disturbing the other residents at the complex. I accept those statements.

18. I also accept the landlord's claim that the tenant had been acting in an antisocial matter towards him and had she had been using profanities in their verbal and text-message exchanges.
19. I find that that sort of behaviour described by the landlord and ■■■ to be unreasonable, especially given that the tenant resides in a complex with other residents living in units adjacent to hers, and I agree with ■■■ that it would interfere with those residents' quiet and peaceful enjoyment. Accordingly, I find that the landlord was in a position, on 16 September 2021, to issue the tenant a termination notice under this section of the *Act*.
20. As the notice meets all the requirement 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.

10 February 2022

Date

