

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0064-03

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:16 a.m. on 14-December-2021.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
4. The landlord provided a witness, [REDACTED], who resides in the same complex as the tenant, hereinafter referred to as “witness.”

Issues before the Tribunal

5. The landlord is seeking vacant possession of the rental premises.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy and Section 35: Service of documents.

Issue 1: Vacant Possession of the Rental Premises

Landlord Position

8. There is some discrepancy concerning the rental agreement. The landlord and tenant entered into a verbal agreement and the landlord then submitted a letter (LL#01) that he provided to the [REDACTED] to make arrangements for the tenant’s rent payments. This letter is dated for November 01,

2019. It says \$850.00 rent is due the 1st of each month and that there is a security deposit of \$375.00. It also says no smoking and no drugs permitted. He said she took occupancy around December 01, 2019, but may have moved in a little earlier.

9. The landlord disputes that there was a charge for pets; the rent for her unit is \$850.00 and he said he only gave permission for the two dogs, he never gave permission for the cat.
10. The landlord provided the Notice to terminate early – cause, for interference with peaceful enjoyment and reasonable privacy (LL#02). The form was signed on October 19, 2021 with a termination date of October 30, 2021. The landlord served this notice on the date signed, October 19, 2021, by giving it to her in person.
11. The landlord has a number of issues with the tenant, most of the issues are in relation to the use of the common stairwell in the apartment building. The building holds six apartments. It is a two story building with 3 apartments upstairs and 3 downstairs. The outside upstairs units, have a stairwell along the outside of the building. The middle upstairs and downstairs units have an interior staircase area that is shared by both of these middle units. The tenant lives in the downstairs middle unit.
12. The landlord said that the tenant treats this common area as part of her rental. She uses this area to visit with people, smoke, drugs are used here, her cat uses this area and there is a smell of cat urine, she has personal belongings on the stairs and she has denied him access to this area. The landlord provided photos to support these claims. Photo 1 (LL#03) shows drink containers, a cell phone plugged in, he was very concerned with a baggie of drug paraphernalia and a needle left open on the staircase, shown in the picture.
13. The issues with the common stairwell are the responsibility of the tenant, the upstairs tenant has moved recently and the landlord has been doing renovations to that unit. This is a locked area that only the landlord and the tenant would have access.
14. The landlord said that he has received complaints from other tenants, that there is often a group of people hanging out in this area, smoking, drinking and doing drugs. He provided a written statement (LL#06) saying that he told her that this was an issue and that the upstairs tenant had threatened to move if this continued.
15. The landlord said another tenant complained that she had threatened him. After she made the threats the other tenant, he immediately called the landlord, during the call she was banging on the other tenant's door. She banged so forcibly that she dented the door.
16. According to the landlord, the upstairs tenant left because he said he couldn't take it anymore, the loud partying, the people in the stairway and the drug use. He also had issues with another tenant. He didn't want to get into any confrontation with the tenants so he chose to leave.
17. The landlord said that the tenant has refused him access to the stairwell area, expecting a 24 hour notice, he said she doesn't recognize that this is not her apartment, this is a common area that he has the right to access at any time. He said one time when trying to access the area she slammed the door on his foot and left marks, all the while, yelling and threatening to punch him in the face.

18. The landlord said that the tenant is very aggressive, confrontational and threatening. The landlord said that sometimes he has not responded appropriately to her, because she is so aggressive with him. He states he has never thrown a shop vac at her.
19. The landlord presented a witness who is a tenant in the same building. The witness agreed with the landlord, stating that the tenant is not easy to speak with, she becomes very aggressive and she has threatened him as well. One day she threatened to punch him in the head over something that has nothing to do with her. He agrees with the landlord that you can't engage her in a conversation with her because she goes straight to violence.
20. The witness said that there is often four or more people in the porch drinking sometimes all day. He said the tenant has people coming and going all hours of the day and night. He recently was awakened by someone knocking on her window about two weeks ago at 4:30 in the morning; his apartment is adjacent to hers. During this past summer and fall he said that this was a common occurrence. He also said that when the tenant and her boyfriend broke up there was a lot of disruption caused in the building.
21. The landlord said that the personal belongings in the staircase are also an issue, as it is a tripping hazard and when he checked with the fire department, they said that the area is to be kept free of debris. The landlord provided pictures showing the personal items littering the staircase (LL#03 & LL#04). At the time these pictures were taken, she is the only person living in the center part of the building.
22. The landlord also sent in a picture of the cat on the staircase (LL#05). The landlord said that she is not permitted a cat and has been told to get rid of it. The landlord said that the cat is spraying and there is a smell of cat urine in the staircase. In the written statement (LL#06) he said that when she was told to get rid of the cat she responded that she, "was not getting rid of the f*****g cat."
23. The landlord said that the tenant wanted the door changed because she said it was unsafe. He said she had other issues, for example a new window that was leaking. He had some people in changing out the door and asked if they would do the apartment repairs when they finished. He said that once they finished the door, they refused to do any more work because the tenant was constantly complaining about issues she had with him and the apartment, they told him she talked non-stop and the workers said they wouldn't go into the apartment to do further work.
24. The landlord is concerned about the safety of others in the building, with drug use, smoking and partying in the stairwell. The smoking and drug use is not permitted and it says so specifically in the rental agreement (LL#01). The stairwell is also cluttered with personal belongings on the stairs creating a tripping hazard. The cat spraying the common area and the smell of that cat urine will stop people from renting and the cat is not allowed. These conditions impact not only the people who live there now, but it impacts the ability to rent the units.

Tenant Position

25. The tenant raised discrepancies with the rental agreement, she said that the rent is \$750.00 a month and the landlord charges \$100.00 for her pets 2 dogs and a cat. She said that a cost for pets wouldn't be covered under social services, so it is included in her rent. She also said that the landlord charged \$450.00 rent for the first month

because she had a lot of work to do on the apartment before it was ready to be lived in. She said her previous landlord returned half a month's rent so that she could move in two weeks early in November 2020.

26. The tenant said that the needle and paraphernalia that are in the picture (LL#01) provided by the landlord are not hers. She said a friend came by to use the washroom and she is a drug user, this friend used the drugs in that area while visiting with the tenant. The tenant said the friend didn't pick up her paraphernalia after she finished using, so that she guesses that the friend thought that she would pick up and dispose of the needle.
27. The tenant said the reason that she smokes in the stairwell is because she doesn't want to smoke in the apartment with her kids. She said that smoking is allowed. She visits with friends out there so that her kids can nap without the noise.
28. The tenant says that it is only the landlord who thinks her behavior is an issue. She said she is always doing things to help out or make the place look nicer.
29. The tenant believes the upstairs tenant left because of another tenant and that she and the upstairs tenant were very close.
30. The tenant said that the landlord threw a shop vac at her and that this traumatized her kid.
31. The tenant said that the witness had submitted a statement saying that she sells her kids drugs and keeps them for herself (included in witness statement (LL#06). She says that this doesn't make sense: is she selling or keeping the drugs? She said all she gets for her kid is melatonin. The tenant said the only reason she threatened the witness is that she thinks he is disrespectful to women and he was disrespectful to her friend.
32. The tenant said that she had a cat when she moved in and that this cat had a kitten, the kitten is the cat who lives there now, the original cat ran away. She says that she has always had a cat and is allowed two dogs and a cat. She said the kitten only sprayed in the staircase area one time.
33. The tenant has a number of issues with the apartment that she says the landlord won't address.
34. The tenant pointed out that there are issues with other tenants as well. She said she had a cat when she moved in and that she has not been told she can't smoke, but knows that there is no drug use permitted. She also said she is a mother to two autistic children and that the landlord is making up reasons to kick them out. She had struggled with addiction a few years ago and she finds this very stressful and if she relapses she'll lose her youngsters. She believes the other tenants love her and appreciate what she does to make the area look better and help others out.

Analysis

35. Section 10. 7(a) of the Residential Tenancies Act, 2018, states
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.

36. The tenant's refusal to permit the landlord entry into a common area is a violation of his rights. A landlord would have to give 24 hours' notice to a tenant if he was to enter the apartment area, however the landlord should have full and free access to the common stairwell. The tenant may have been confused about this technicality when she was refusing entry but the landlord is entitled to enter the common area without notice.
37. The use of the common area by the tenant, who has acknowledged that she does use this space for visiting and smoking to permit her kids to nap and not be subjected to the smoke, is not an appropriate use of this common area. The rental agreement (LL#01) clearly states that there is to be no smoking or drug use on the property as shown in paragraph 8.
38. Further to this, the use of drugs and drug paraphernalia, including needles, in a common area can only reasonably be considered interference with the rights of the other tenants who would require use of this area to access their apartment. I accept the landlord's testimony that the upstairs tenant left because of this type of issue in the building, it is reasonable to assume that no one would find it acceptable to have to walk through an area where people are hanging out all day, drinking, smoking and shooting up.
39. Used needles in the stairwell is a very dangerous issue. The tenant said it was a friend who had used the drugs and it is the friend's needles and paraphernalia. The tenant also said that she has two small children living at this apartment and I would presume that they use this area where these needles were left on a step. This is unacceptable risky behavior.
40. Section 10.2 of the *Residential Tenancies Act, 2018*, also states:

2. Obligation of the Tenant - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.
41. The tenant testified that she let the person in to use the washroom (paragraph 28) and that her guest used her drugs in the porch. This is a violation of the rental agreement (LL#01). Also, the tenant should have immediately, in consideration of the other people who access this area, removed and disposed of the needles in a safe manner. This is her obligation, as shown above in paragraph 40, because the individual was a guest of hers and there is an obligation of the tenant to keep the area clean. Open needles are a serious health and safety concern.
42. Finally, the tenant believes that the other tenants love her and it is only the landlord who is trying to evict her and her children. She said if anyone had an issue with her they could come to her and tell her. This is contrary to the testimony that: the landlord testified that she berates him and threatens violence, the witness said she is unable to have a conversation and goes straight to violence, another tenant was threatened by her and she pounded on his door so aggressively, she dented the door, the upstairs tenant moved and she permits people to inject drugs and leave dirty needles in the common stairway.
43. I find that the tenant is violating the peaceful enjoyment of others in her building.

44. Section 24 of the *Residential Tenancies Act, 2018*, states:

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.

45. As stated in paragraph 10, the landlord said that he gave the tenant a Notice to terminate early – cause, for interference with peaceful enjoyment and reasonable privacy (LL#02). The form was signed on October 19, 2021 with a termination date of October 30, 2021. The landlord served this notice on the date signed, October 19, 2021, by giving it to her in person.

46. The landlord’s notice to terminate meets the standard of the *Act*.

Decision

47. The landlord’s application for vacant possession of the rental premises succeeds.

Summary of Decision

48. 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 tenant shall move immediately

December 17, 2021
Date

