

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0264-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:05 am on 09 July 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”, did not participate.

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. The landlord testified that he had personally served the tenant with notice of the hearing on 05 July 2021 and the tenant has had 3 days to provide a response. Policy with this Section is that a respondent to an application is to be served with that application and the notice of the hearing at least 10 days prior to the hearing date. I waived that requirement in this particular case out of concern for the safety and well-being of the landlord and the other tenant’s residing at the rental complex.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

7. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenant on 18 February 2021. The agreed rent is set at \$830.00 per month and the landlord stated that the tenant had paid a security deposit of \$622.50.
8. The landlord stated that the rental unit is a basement apartment and there is 1 apartment located above that unit. He also testified that during February and March 2021, that upstairs unit sat vacant.
9. At the end of March 2021, the landlord stated that he was able to secure new occupants for that upstairs unit and these tenants began to move in their possessions a few days later. The landlord characterized these new occupants as “foreign students” and he stated that they were visible minorities.
10. During the move in, the landlord stated that the tenant approached these students and began harassing them. He stated that the tenant informed these students that they could not move into their new apartment and he was using racial slurs during his interaction with them. The landlord also stated that the tenant had threatened that he would “blow their heads off”. In support of that account, the landlord submitted into evidence a copy of a video, taken by one of these students, that captured the incident just described (█ #1).
11. The landlord stated that because of the harassment and the threats, these new occupants felt uncomfortable about living in the upstairs unit and they vacated just a few days later.
12. On 14 April 2021, the landlord stated that he again secured new occupants for that upstairs apartment. That apartment is now rented out to █ and her partner.
13. On the same day that █ moved in, the landlord started receiving complaints from her about the behaviour of the tenant. Initially, those complaints concerned the smell of smoke that was coming from the tenant’s apartment. These 2 apartments are non-smoking units and █ complained that she could smell that smoke in her unit and she requested that the landlord have her unit cleaned as a result.
14. The landlord stated that █ also complained about the tenant’s behavior towards her as well. He stated that █ had informed him that the tenant had been harassing and threatening her aslo and loud noises can be heard coming from the tenant’s apartment. In support of that claim, the landlord submitted 3 videos which were taken by █ while inside her unit (█ ##2-4). In these videos, the tenant can be heard yelling through the walls at █ and calling her and her partner “fucking rats”, “fucking maggots”, “fucking pricks” and “fucking faggots”

and he threatens to “bury the both of them”, that he will “chew the leg off the two of you” and he will “rip your fucking eyes out.”

15. With his application, the landlord had also submitted an affidavit (█ #6) from █ in which she recounts some of the incidents described in the previous paragraph. █ also testifies in that affidavit that she had to call the police as a result of the tenant’s behaviour.
16. In addition to the complaints from █ the landlord stated that the tenant’s neighbours have made similar complaints to him and they have informed him that they no longer feel comfortable being outside on their own property when the tenant is about.
17. Additionally, the landlord complained that he has had his own run-ins with the tenant. He testified that whenever he visits the property, the tenant is constantly arguing with him and makes profane threats. He also stated that he has a garage on the property of the complex that he uses as storage for his other rental units, but he testified that he no longer feels comfortable working out of there because of the tenant’s behaviour.
18. Because of these issues, the landlord testified that he personally served the tenant with a termination notice on 28 May 2021 and a copy of that notice was submitted with his application (█ #7). That notice was issued under section 24 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 08 June 2021.
19. The landlord stated that the tenant has not vacated as required and he is seeking an order for vacant possession of the rented premises.

Analysis

20. 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.

21. The video evidence submitted by the landlord clearly shows that the tenant had been making threats to the students who tried to move into the property in April 2021, that he had also been harassing and threatening ■ and that he was yelling and banging on the walls at the complex. I also accept the testimony of the landlord that the tenant had been acting in a similar fashion towards him when he would visit the property.
22. That sort of behaviour is antisocial and unreasonable. I accept the landlord's claim that that behaviour had been interfering with his ability to carry out work on the grounds of the complex and that it was making it difficult for his to secure and maintain tenants in the upstairs apartment. It is also apparent that the tenant's unreasonable and antisocial behaviour had been interfering with ■ quiet and peaceful enjoyment of her unit.
23. Because of the tenant's continuous, unreasonable behaviour, I find that the landlord was in a position, on 28 May 2021, to issue the tenant a termination notice under this section of the Act.
24. As that notice meets all the requirements set out in this section of the Act, it is a valid notice.

Decision

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

26. 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

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

09 July 2021

Date

