

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0270-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 1:15 pm on 07 September 2021 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED], hereinafter referred to as “the landlord”. 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* 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) respondents 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 the tenant was served with notice of the hearing, by registered mail, on 08 July 2021. Although the tenant never did collect that letter, section 42.(6) of the *Residential Tenancies Act, 2018* states that it is nevertheless considered to have been served on the tenant on the 5<sup>th</sup> day after mailing. 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 her absence.

7. The landlord called the following witnesses:
  - [REDACTED] – resident manager at the rental complex
  - [REDACTED] – tenant in unit 310 at the rental complex

## **Issue 1: Vacant Possession of Rented Premises**

### **Relevant Submissions**

8. The landlord stated that he had entered into a monthly rental agreement with the tenant on 01 April 2021. The agreed rent was set at \$845.00 and the landlord stated that the tenant had paid a security deposit of \$336.00.
9. The landlord stated that he had been receiving numerous reports about the tenant's behaviour since she moved into the unit and he claimed that she has been disturbing multiple other residents at the complex. He stated that these reports concern loud noise and screaming coming from the tenant's rental unit and he stated that there have also been complaints about the tenant throwing items out of her window.
10. [REDACTED] the resident manager at the complex, was called as a witness and he corroborated the reports the landlord had received. He stated that he had received complaints from about 10 other residents at the complex concerning the noise coming from the tenant's [REDACTED] stated that these residents have also complained about loud fights or altercations in the tenant's unit and he stated that the police have been at the tenant's unit on several occasions.
11. [REDACTED] also testified that on several occasions the tenant had been throwing furniture and clothing out of her window and she had been littering the common hallways with garbage and beer bottles. He also testified that he had witnessed her in a common area of the complex without any clothes on.
12. [REDACTED] also stated that the tenant had been causing damage to her unit. He pointed out that the oven door had been removed from her stove and he complained that there had also been a fire in her apartment.
13. [REDACTED], a resident of the complex who lives in the apartment directly above the tenant, was also called as a witness. He complained that all through the summer there have been loud noises coming from the tenant's unit, at all times of the day and night. He testified that he can hear loud banging coming from her unit as

well as screaming and yelling. He stated that the noise is so loud that the floors in his apartment would vibrate. ■■■ stated that the noise has been so disturbing that there was a period of about 2 weeks where he was unable to sleep and he claimed that the noise is even scaring his cat.

14. ■■■ also reiterated ■■■ claim that the police have been at the unit multiple times and he stated that he has personally had to call them on several occasions himself.
15. Because of these complaints, the landlord issued the tenant a termination notice on 08 June 2021 and a copy of that notice was submitted with his application (■■■ #1). 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 14 June 2021.
16. The landlord stated that the tenant has not vacated her unit as required and he is seeking an order for vacant possession of the rented premises.

## Analysis

17. 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.*

18. I accept the testimony of the landlord's witnesses in this matter and I find that the tenant had been responsible for the loud noises and yelling coming from her apartment. I also accept [REDACTED] claim that the tenant had caused damage to her apartment, that she had been throwing things out of her window and that she had been littering in the common areas.
19. All of that behaviour is unreasonable, especially considering that the tenant's unit is in a residential complex with multiple units adjacent to her own. I also accept [REDACTED] testimony that the tenant's continuous and unreasonable behaviour is interfering with his quiet and peaceful enjoyment of his own apartment.
20. Based on that evidence and testimony, I find that the landlord was in a position, on 08 June 2021, to issue the tenant a termination notice under this section of the *Act*.
21. As that notice meets all the requirements set out in this section of the *Act*, it is a valid notice.

## **Decision**

22. The landlord's claim for an order for vacant possession of the rented premises succeeds.
23. 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**

24. 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.

## Summary of Decision

25. 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.

08 September 2021

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Date

