

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0330-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:45 a.m. on September 8, 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

Issues before the Tribunal

4. The landlord is seeking an order for vacant possession of the rented premises due to tenant contravening the peaceful enjoyment and reasonable privacy.

Legislation and Policy

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

Preliminary Matters

7. The landlord has called three neighbors as witnesses:
 - [REDACTED] hereinafter referred to as Witness 1
 - [REDACTED] hereinafter referred to as Witness 2
 - [REDACTED] hereinafter referred to as Witness 3
8. The landlord provided the board with the phone numbers and all witnesses were asked to wait outside of the teleconference. Each person was phoned individually and brought into the hearing when required to testify.

Issue: Vacant Possession due to violation of peaceful enjoyment

Relevant Submissions

9. Both parties confirmed that they entered a written monthly rental agreement (████#01) on October 15, 2020. The rent is \$850.00 due on the first of every month. There was a security deposit paid in the amount of \$425.00 on October 15, 2020. The tenant took possession on that date. The agreement was signed on November 17, 2020.
10. Included in the application, the landlord submitted a copy of the termination notice (████#02) which he indicated was served in person on the date signed: July 28, 2021.
11. The termination notice was issued under section 24 of the *Residential Tenancies Act, 2018* (notice where tenant contravenes peaceful enjoyment and reasonable privacy) with an effective termination date of August 03, 2021. The tenant confirmed that he received the notice as stated.

Landlord's Position

12. The landlord stated that he has had his sleep frequently interrupted by the tenant who lives in the downstairs apartment. It is his belief that the tenant is a "night owl" who is up most of the night and becomes active just as most people are going to bed.
13. The landlord listed a number of dates and activities where he was awakened by the tenant:
 - Jan 17, 2021 the tenant had a gas operated mountain bike in his kitchen
 - April 10, 2021 there was a disturbance in the apartment at 1:30 am between the tenant and his girlfriend. They were throwing things and he states there were baseball bats and gas cans coming out of the apartment. The RNC attended, blocked the road and had lights and sirens activated. His adult son was a witness to this and was frightened by the activity.
 - July 15, 2021 the tenant was charging a car battery inside the house
 - July 21, 2021 the tenant was screaming and fighting with his girlfriend in the driveway.
 - August 14, 2021 at 1:30 am the tenant was banging and knocking things in the driveway
 - August 17, 2021 moving recycling and containers starting at 9:00pm and going on throughout the night until 6:00 am, at 4:00 am he was moving garbage materials and woke the landlord as well as a witness (who testified later).
14. The landlord stated that this is just a sampling of the ongoing behaviour and that numerous times the tenant is out working on his truck late at night.
15. The landlord goes to bed about 10:30 pm every night, he works in the morning and that every night the tenant seems to start his activity in the late night to early morning.
16. The landlord noted that this is in violation of the rental agreement (████#01) that the tenant signed stating that there will be no noise between the hours of 11:00 pm and 8:00 am.

17. The landlord needs the apartment for his son who has a medical condition.
18. The landlord has offered his assistance to help the tenant move.

Witness1

19. The landlord called witness1 and she stated that the neighborhood is no longer peaceful and that she and her husband have been awakened on numerous occasions by the tenant and the police.
20. She stated that her husband approached the tenant about the noise and the tenant was aggressive with her husband and asked if he was going to hit him and said "come on." She saw this as being very aggressive.

Witness2

21. The landlord called witness2 and he stated that the tenant has caused disturbances on the street, he drives the wrong way and has on a number of occasions been heard screaming and yelling in the middle of the night between the hours of 12:00 and 6:00 am.
22. The police have been there many nights.
23. Witness2 said his girlfriend stays on occasion and has also been awakened by the noise.
24. He has put deadbolts and motion sensors on his house.

Witness3

25. The landlord called Witness3 who agreed that there have been late night in late spring and early summer occurrences of noise, up to 3 or 4 times.
26. The witness lives across the street (about 200-250 feet away) and has been awakened by the noise, he stated he is a light sleeper.

Tenant's Position

27. The tenant said that the landlord was not home on the night the police was called. He stated that the police were there because he called for their help.
28. He disputes that he was taking the wheels off the truck late at night, he states that one night he was working on the truck but it was well before the 11:00 pm curfew.

29. The landlord approached the tenant and the tenant states that after they spoke he refrained from working on his truck late at night.
30. The tenant states that he is going to sleep now in the evening and has been trying to find a place.

Tenant's position re: Witness1

31. The tenant didn't have any questions but stated he didn't know the witness and had only spoken with her husband once. He did not understand why she felt unsafe if they had never met.

Tenant's position re: Witness2

32. He has only meet the witness once and doesn't understand why the witness would put extra locks or security. He has never caused that family any harm.
33. The tenant said he only drives on the wrong side of the street due to the parked cars.

Tenant's position re: Witness3

34. The tenant said that the witness confronted him once about taking out recycling at 5:00 or 5:30 in the morning and that he hadn't done that since.

Analysis

35. 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 -

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. According to Residential Tenancies Policy 7-05 Peaceful Enjoyment, interference of peaceful enjoyment is defined as: "an ongoing disturbance or activity, outside of normal everyday living, cause by the landlord or the tenant". Peaceful enjoyment may include, but is not limited to the following: (i) excessive noise; (ii) aggressive or obnoxious behaviour; or (iii) threats and harassment.

37. Part 1 of the rental agreement (█#01), states: "There shall be a reasonable hour of peace and noise kept to a minimum at all times, as well as, no noise from 11 pm till 8 am." This was signed by the landlord and tenant on November 17, 2020.
38. Both the landlord and tenant have given testimony to describe not only the disturbances, but also statements that show the tenant has spoken with the landlord as well as the surrounding neighbours, about disruptive behaviour. These conversations had resulted in the tenant agreeing with the landlord and neighbors not to continue with activity that creates noise during the hours of 11:00 pm to 8:00 am.
39. The statutory requirement identified in paragraph 35 does not extend to the neighbours. As such, even if the tenant does unreasonably interfere with the peaceful enjoyment of the neighbours, this is not grounds for termination. This testimony is relevant however, in that it corroborates the testimony of the landlord and the landlord's claim that the noise disturbances identified in paragraph 13, would wake him from his sleep. If the noise is loud enough to awaken individuals in surrounding homes, it is reasonable to believe that the noise would awaken the landlord and his son who are in the same home as the tenant.
40. I find that the tenant is in violation of the peaceful enjoyment and reasonable privacy condition outlined in the *Act*.

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

be signed by the landlord;

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.

41. The termination notice provided by the landlord (█#02) adheres to the conditions outlined in the act and is a valid termination notice.

Decision

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

43. The tenant shall vacate the property immediately.
44. 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

45. The landlord incurred the cost of \$20.00 to file this application and provided the receipt for same (████#03).
46. As the claim is successful the tenant shall pay the total of these expenses from the damage deposit.

Summary of Decision

47. 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.

September 15, 2021
Date

