

Residential Tenancies Tribunal

Application [REDACTED]
Application [REDACTED]

Decision 21-0364-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:47 a.m. on September 29, 2021, via teleconference.
2. The applicant, [REDACTED] for file # [REDACTED], hereinafter referred to as “the tenant” did not attend.
3. The respondent and counter claimant, file # [REDACTED] [REDACTED], represented by [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.

Preliminary Matters

4. The tenant was unable to attend the hearing as she was in hospital. Prior to the hearing she had completed the Authorized Representative form ([REDACTED] #01) appointing both [REDACTED] [REDACTED] to act as her representatives. I attempted to contact both parties on their submitted numbers but the calls were unanswered.
5. As the tenant and her Authorized Representatives did not attend, they were unable to present their case and therefore it was subsequently dismissed.
6. The landlord and counter claimant did attend to present his case and his claim proceeded.
7. The tenant was not present or represented at the hearing and I was unable to reach her representatives by telephone at the start of the hearing. 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 she has been properly served. The landlord submitted an affidavit ([REDACTED] #01) with his application stating that [REDACTED] had served the tenant with notice of the hearing, by prepaid registered mail. The envelope is included with the affidavit showing a mail out date of Sept 10, 2021. Registered mail is considered delivered 5 days after it has been sent. 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.

8. The landlord has called three witnesses
 - [REDACTED] hereinafter referred to as Witness1
 - [REDACTED] hereinafter referred to as Witness2
 - [REDACTED] hereinafter referred to as Witness3
9. The landlord provided the board with phone numbers and all witnesses waited outside of the teleconference. Each person was phoned individually and brought into the hearing when required to testify.

Issues before the Tribunal

10. The Landlord is seeking:
 - Premises vacated for interference with peaceful enjoyment and reasonable privacy.
 - Reimbursement for hearing expenses

Legislation and Policy

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

Issue: Vacant Possession due to interference of peaceful enjoyment

Relevant Submissions

13. The landlord stated that they had signed a written rental agreement ([REDACTED] #03) for a fixed term. The tenant moved in on June 01, 2021 and her term ends May 31, 2022. The rent is for \$835.00 per month due on the first of each month. The tenant paid \$342.00 of her \$415.00 security deposit on August 09, 2021. Her rent is up to date with the exception of \$10.00.
14. The landlord's building manager, Witness3, testified that he personally delivered the Termination notice ([REDACTED] #03) on August 9, 2021. The termination date is for August 15, 2021. Witness3 said he explained the notice and told her she should have one of her support people discuss the papers with her, english is not her first language, he was concerned she wouldn't understand what the document was saying.
15. The landlord said that they have been receiving complaints from other tenants due to this tenant's behavior and her lack of cleanliness. He stated that he has been trying to work with the [REDACTED] to help mitigate the ongoing issues with the tenant.

16. All witnesses stated that the tenant and her apartment are unclean and there is a smell of human waste, an abundance of garbage and rotting food that has created a significant fruit fly issue.
17. The tenant was served with a Landlord's Request for Repairs (█ #02). The request was given to her on July 30, 2021 with a completion date of August 02, 2021. The repairs requested are:
 - Clean/tidy apartment throughout
 - Through {sic} cleaning-ensure that human waste smell is removed from apartment/hallways
 - Remove any food waste from the apartment.

The request was not fulfilled to the landlord's satisfaction and they subsequently served her with the Termination Notice (█ #03).

18. Witness1 and Witness3 testified that when they went for an inspection, the apartment was very unclean and the toilet was clogged for at least a week. Witness3 said the toilet was clogged with brown paper towels and that they had to replace the toilet. He told the tenant that she should inform him when something is not working.
19. Witness1 verified that she had attended the apartment and that she noticed that the tenant was wearing clothing that had urine stains on the front. At the time she was inspecting the apartment the tenant was eating food directly off the carpeted floor. There was a box filled with rotting food, open, in the main area and there were fruit flies. Witness1 asked to also check her bedroom which she discovered was "pristine."
20. She spoke to the tenant about the hygiene issues that she witnessed and talked to her about the importance of not eating off the carpet and throwing away garbage.
21. She said that the smell was very noticeable.
22. Witness 3 verified that the tenant's living area is very unclean. The apartment managers have put in deodorizers in the common hallway areas and have fans blowing. This is an attempt to mask the odor, however it is not working.
23. The tenant also displays, ritual/repetitive behaviors that continue for up to a half an hour whenever she is coming and going from her apartment. She locks and unlocks, opens and slams her doors, in a repetitive manner. While she is doing this she is muttering/chanting. This is very disruptive to the neighbors and he receives complaints daily.
24. On day there was a fire alarm going off Witness1 also observed some of the ritualistic behavior. She was standing in the parking lot and observing from the ground, while the fire alarms were sounding, Witness1 viewed the tenant opening and closing the apartment balcony door. Her description was that the tenant for the first 15 minutes would open the door, go outside, open the door, and go inside over and over. Then once she stopped this, she started moving very robotically, putting her arm up, open the

door, put her arm down, put her arm up, close the door, put arm down, repeatedly, for another 15 minutes or so.

25. Witness2 lives across the hall from the tenant. He said that the smell has invaded his apartment and that although the apartment management have put out deodorizers and fans, the smell is still there. This smell is so bad that he is embarrassed and no longer invites anyone to his home. The building is also infested with flies. He is considering moving.
26. Witness2 also said that the chanting and opening/closing/slammings of doors is an ongoing issue. It happens every time the tenant leaves the apartment and it happens all hours of the day and night. This occurs multiple times every day. He has voiced his complaint with the managers.
27. Witness3 has also had reports of moaning and stomping on the floors throughout the night.
28. Witness 2 and Witness3 have compassion for the tenant, they believe that she might be struggling with a mental health issue. They don't know if she is capable of managing her behavior. Many of the tenants in the apartment complex have tried to help her, but her behavior is disruptive to everyone.
29. Witness3 said that he gets numerous calls about the noise and smell coming from the apartment. Service people who were there to replace sprinkler heads have threatened to not go in the apartment because of the conditions. The Orkin pest control technician said it is one of the worst cases of fruit flies he has dealt with. The plumber who had to replace the broken toilet said the clog was from the actions of the tenant.

Analysis

30. Everyone who testified spoke with concern for the tenant. Her behavior however is disrupting the lives of others in the apartment complex.
31. 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.

....

32. 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.
33. The onus is on the landlord to prove interference of peaceful enjoyment. The Witnesses gave a consistent account of events and although they conveyed compassion, it was clear that the issue of ongoing noise and the offense smells would be outside of normal everyday living and it is negatively impacting the other tenants in the building. The tenant is violating the peaceful enjoyment of others in the building.
34. 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.

35. The termination agreement (█ #03) provided by the landlord follows the guidelines in Section 24 of the Act.

Decision

36. The termination notice is valid and the tenant should have moved on August 15, 2021. The landlord’s claim for vacant possession succeeds.

Issue #2 Hearing Expenses

37. The landlord incurred the cost of \$20.00 to file this application and provided the receipt for same (█ #06).

38. As the claim is successful the tenant shall pay for this expense from the security deposit.

Summary of Decision

39. The landlord is entitled to the following:

- An order for vacant possession
- The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sherriff 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 for the cost of filing this application.

October 14, 2021

Date

