

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0460-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:30 PM on 16 November 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 attend the hearing.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for vacant possession of the rented premises,
 - An order for a payment of rent in the amount of \$600.00,
 - An order for a payment of late fees in the amount of \$75.00, and
 - Authorization to retain the \$372.00 security deposit.

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 him 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) a respondent 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 she had served the tenant with notice of the hearing, by e-mail, on 19 October 2021 and a copy of that e-mail was also submitted with her application. 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 his absence.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

7. The landlord stated that she had entered into a monthly rental agreement with the tenant on 01 December 2020 and a copy of that agreement was submitted with her application. The agreed rent was set at \$600.00 per month and the landlord testified that the tenant had paid a security deposit of \$500.00.
8. The rental unit is a basement apartment and the landlord lives in the unit directly above the tenant, with her 8-year old child.
9. The landlord stated that since the summer of 2021, she has been able to hear a lot of loud noises coming from the tenant's apartment. She complained that he is playing loud music in his apartment and that he is also screaming and swearing loudly, even though he is the only person living there. She also stated that she can also hear loud crying coming from the tenant.
10. In support of her testimony, the landlord submitted 5 videos with her application (█ #2) in which the tenant is heard screaming and crying, and others where loud music can be heard.
11. The landlord stated that the police have visited the unit about 20 times and she stated that she has had to call them on several occasions herself. In support of that claim, the landlord submitted a response to a request for information she had received from the Royal Newfoundland Constabulary (█ #3), showing that they had visited the tenant's apartment on 5 different occasions and those visits were classified as: "Assistance to General Public" (3), "Mental Health Act" (3) and "Detention of Intox Person" (1).
12. The landlord stated that these incidents are very disturbing and they are interfering with her quiet enjoyment of her home. She pointed out that she works from home and she has had to move her office so that she can escape the noise. She also stated that these disturbances are affecting her own mental health and she also claimed that her 8-year old son is confused and scared by the sounds that can be heard coming from the tenant.

13. As a result of these issues, the landlord issued the tenant a termination notice on 05 August 2021 and a copy of that notice was submitted with her application (█ #4). That notice was issued under section 24 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 11 August 2021.
14. The landlord stated that the tenant has not vacated as required and she is seeking an order for vacant possession of the rented premises.

Analysis

15. 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.*

16. I accept the testimony of the landlord in this matter and her evidence clearly shows that there have been loud noises coming from the tenant's apartment, that the tenant has been yelling and crying, and that there have been numerous police visits to his unit.
17. I find that that sort of behaviour is unreasonable, especially given that the landlord is living in the apartment directly above him with her young child, and it is clearly interfering with her quiet and peaceful enjoyment of her home. Accordingly, I find that the landlord was in a position, on 05 August 2021, to issue the tenant a termination notice under this section of the *Act*.
18. As the notice meets all the requirement set out in this section of the *Act*, it is a valid notice.

Decision

19. The landlord's claim for an order for vacant possession of the rented premises succeeds.
20. 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: Rent - \$600.00

21. The landlord stated that the monthly rent was set at \$600.00, and she testified that the tenant had been paying his rent every month, as required, except for the month of September 2021. She is seeking an order for a payment of \$600.00 for that month.

Analysis and Decision

22. I accept the landlord's testimony in this matter and I agree with her that the tenant had not paid his rent for September 2021 as required. As such her claim succeeds.

Decision

23. The landlord's claim for a payment of rent succeeds in the amount of \$75.00.

Issue 3: Late Fees

24. The landlord has assessed a \$75.00 late fee.

Analysis

25. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) *Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.*

The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

26. As the tenant has been in arrears since September 2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

27. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 4: Security Deposit

28. The landlord stated that the tenant had paid a security deposit of \$372.00 before he moved into the unit and a copy of an e-mail e-Transfer receipt was submitted with her application showing that payment (█ #5). As the landlord's claim for rent and late fees has succeeded, the landlord shall retain that deposit as outlined in this decision and attached order.

Issue 5: Hearing Expenses

29. The landlord submitted a hearing expense claim form with her application as well as a receipt showing that she had paid \$20.00 to file this application and another receipt showing that she was charged \$20.00 to have her affidavit notarized. As the landlord's claim has been successful, the tenant shall pay these hearing expenses.

Summary of Decision

30. The landlord is entitled to the following:

- A payment of \$773.89, determined as follows:
 - a) Rent Owing\$600.00
 - b) Late Fees\$75.00
 - c) Hearing Expenses.....\$40.00
 - d) LESS: Security Deposit..... (\$372.00)
 - e) Total\$343.00
- An order for vacant possession of the rented premises,
- The tenant shall also 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.

24 November 2021

Date

