

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0509-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:11 AM on 20 January 2022 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED] hereinafter referred to as “the landlord”.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant”, also participated in the hearing.

Issues before the Tribunal

4. The landlord is seeking an order for vacant possession of the rented premises.

Preliminary Matters

5. The landlord called the following witness:
 - [REDACTED] – resident in apartment 409

Legislation and Policy

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

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

8. The landlord stated that she had had entered into a 1-year, fixed-term lease with the tenant on 01 July 2018, and a copy of that executed agreement was submitted with her application (█ #1). The current rent is set at \$910.00 and it is acknowledged in the lease that the tenant had paid a security deposit of \$445.00.
9. The landlord stated that she had received numerous complaints about the tenant from other residents at the complex concerning an incident which occurred on either 21 or 22 September 2021. She stated that these complainants, who wished to remain anonymous, reported to her that they could hear loud disturbances and excessive noise coming from the tenant's unit, caused either by him or his guests.
10. She also reported that she had received previous complaints about the tenant back on 31 August 2021. It was reported to her that on that date the tenant had been yelling in the hallway and that he had been arguing with his roommates. The person who made that complaint also wished to remain anonymous as she is afraid of the tenant and is fearful of retaliation.
11. Because of these issues, the landlord stated that the tenant was issued with a termination notice on 22 September 2021, and a copy of that notice was submitted with her application (█ #2). That notice was issued under section 24 of the *Residential Tenancies Act, 2018*, and it had an effective date of 30 September 2021.
12. The landlord also stated that the disruptive behaviour of the tenant has continued since that notice was issued.
13. The landlord testified that she had recently been informed by an MHA that he had also received complaints from some of the residents at the complex, who also wished to remain anonymous, about the behaviour of the tenant. That MHA relayed to her that he had been informed that the tenant had been dealing drugs, that he had threatened other residents at the complex, and that excessive noise could be heard coming from the tenant's unit.
14. She also reported that she had received reports that the tenant had been posting images in social media concerning guns and drugs.
15. █, a resident at the complex who lives across the hall from the tenant, was called a witness. She complained that since October 2021 the tenant has been making loud noises throughout the day and night which is affecting her mental health and affecting her ability to sleep. She also testified that the tenant had

been looking under her door and had been cursing and swearing in the hallway at her. [REDACTED] also stated that the tenant had been causing some damage in the common areas and she stated that he had kicked a heater and that he was responsible for a hole in the wall in the hallway.

16. [REDACTED] stated that because of these issues, she had to call the police on 1 occasion, and she also stated that on another occasion she had her brother escort her to her apartment from the laundry room out of fear of the tenant. [REDACTED] testified that because of all of these issues she had requested that the landlord transfer her to a different apartment.
17. The landlord pointed out that the tenant had not moved out, as per the termination notice issue to him in September 2021, and she is seeking an order for vacant possession of the rented premises.

The Tenant's Position

18. The tenant denied the complaints made by the landlord and by [REDACTED]. He stated that he lives by himself, that he has no roommates, and that he is a quiet person. He testified that as he lives alone, he has not been fighting with anyone in his apartment, and he denied that he had held any parties. He also denied that he had placed any posts on social media in over a year.
19. The tenant also stated that the landlord had never complained to him about any noise issues and he denied that anyone had visited his unit to deliver him a termination notice. He testified that the only notice he had received from the landlord was the notice of this hearing, which had been sent to him by registered mail in November 2021.

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. Much of the testimony provided by the landlord at this hearing amounted to no more than hearsay evidence—that is, evidence or testimony about what someone else had told her about the tenant’s behaviour. Although hearsay evidence is admissible at these hearings, it is afforded little weight, and would not be solely relied upon to reach a decision that would have such an important impact on the tenant’s circumstances, such as his removal from his apartment. The evidentiary weight of anonymous complaints, or reports about anonymous complaints, where even the name of complainant is hidden, are also heavily discounted.
22. However, ■ did testify that that the tenant had been interfering with her peaceful enjoyment, that she could hear loud noises and disturbances coming from his unit, and that the tenant had been acting in a threatening and antisocial manner towards her. I found that testimony to be credible and I agree with the tenant that that behaviour would have a significant impact on her quiet and peaceful enjoyment of her apartment. For those reasons, I believe that the landlord was in a position to issue the tenant a termination notice to the tenant under this section of the *Residential Tenancies Act, 2018*.
23. But did the landlord issue such a notice? The tenant denies that he was given such a notice by the landlord or by anyone who works for her. The landlord stated that she had not personally delivered the notice to the tenant, and she could only tell the Board that “it would have been delivered by the resident manager” or another representative, and that these notices are “usually” issued by a caretaker or, if she is not available, by a maintenance technician. The

landlord was not able to give any more specifics about who delivered the notice or in what manner it was issued to him, and no affidavit was submitted by her staff about the delivery, and no staff member was called as a witness to provide any first-hand account of the matter.

24. Although I have found that the landlord had established that the tenant had been unreasonably interfering with [REDACTED]'s peaceful enjoyment, I have to conclude that, on the balance of probabilities, she had not established that the termination notice was given to the tenant. The tenant denied that he had received the notice, and the landlord's only evidence concerning that matter was hearsay evidence, which I discussed in paragraph 21, above.
25. As the landlord failed to establish, on the balance of probabilities, that the tenant had been issued with a termination notice, in accordance with s. 35 of *Act*, her claim for an order for vacant possession of the rented premises does not succeed.

Decision

26. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

08 February 2022

Date

