

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0518-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:08 AM on 07 December 2021 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED] [REDACTED] hereinafter referred to as “the landlord”. The respondent, [REDACTED] hereinafter referred to as “the tenant”, also participated.

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*.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord’s Position

6. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant on 01 December 2020, and a copy of that executed lease was submitted with her application ([REDACTED] #1). The agreed rent is set at

\$850.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$637.50.

7. The tenant's rental unit is an apartment located in a residential complex containing numerous other apartments, some of which are adjacent to the tenant's, and there are shared common areas, like hallways and a common entrance area.
8. The landlord stated that there have been numerous complaints from other resident's at the complex who live around her apartment, and with her application she submitted 7 incident reports that were written up by her resident manager in response to those reports (█ ## 2-7).
9. The first report concerns an incident which occurred on 29 December 2020. In that report the resident manager reports that she had received a complaint from the tenant in unit 220 that the tenant was screaming in the common hallway and banging on other resident's doors. The police were called to the unit and the report stated that the tenant was removed by them. The resident manager also reports that she was informed that this was a "domestic violence" situation and that it was in fact the tenant's boyfriend who was removed from the complex.
10. The landlord stated that a similar incident took place on 27 February 2021, around midnight (█ #3). The resident manager reports that she had received calls from residents in 3 different apartments complaining about fighting taking place between the tenant and her ex-boyfriend and the tenant was again running in the hallways and knocking on doors. The resident manager reports that she had called the police and they visited the complex twice on that night. She also reports that these residents had reported to her that they were woken by all the noise and that there was glass broken in the hallway and there was blood on the tenant's door.
11. The next report concerns an incident which took place on 02 July 2021 (█ #4). On that date, the resident manager reports that she saw the tenant running outside on the property and she was being chased by her ex-boyfriend. She writes that she saw the tenant slap her boyfriend, and the resident manager then called the police. The police informed her that they were already on their way in response to an earlier call. The resident manager reported that the ex-boyfriend was arrested on that date, and she again found broken glass and blood in the common areas.
12. The landlord pointed to another report from 21 October 2021 (█ #5) in which the resident manager received complaints from residents who told her they could hear "a very violent domestic argument" taking place in the tenant's apartment and that it sounded as if they were physically hurting each other. The report stated that the police made 2 visits that day, about an hour apart, and that during the second visit, 4 police cars were dispatched, traffic was held up, and 2 buildings at the complex were surrounded. The tenant's ex-boyfriend was again

arrested and released an hour later. The report also states that the tenant's door had been badly damaged.

13. On 27 October 2021 (█ #6), the landlord received further complaints from residents in the units next to her and below her, about loud banging that could be heard coming from her apartment at 4:00 AM. The resident manager writes in those reports that these residents were disturbed by these banging sounds and complained to her that they had to get up for work shortly.
14. More reports were received on that same day at 9:00 PM (█ #7), again concerning noise, and 4 police officers visited the tenant.
15. The landlord stated that some of the residents at the complex have approached her and expressed frustration with the situation with the tenant and some have threatened to move out of the unit themselves if no action is taken, while another resident has threatened to stop paying rent.
16. As a result of these issues, the landlord issued the tenant a termination notice on 27 October 2021 and a copy of that notice was submitted with her application (█ #8). That notice was issued under section 24 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 02 November 2021.
17. The landlord stated that the tenant has not vacated as required and she is seeking an order for vacant possession of the rented premises.

The Tenant's Position

18. The tenant stated that all of the incidents that the landlord reported concerned issues between her and her ex-boyfriend. She stated that they had a baby last year and she has found it difficult to cut ties with him. She stated that when she did invite him over to her apartment for a visit, he would oftentimes refuse to leave and would become violent.
19. With respect to the incident on 29 December 2020, the tenant acknowledged that she was running in the hallways knocking on the other resident's doors, but she stated that she had done so because she was seeking help. She testified that she was the one who had called the police on that day—not the other residents—and she also denied that she or her ex-boyfriend were removed or arrested.
20. The tenant gave more or less the same account about the incidents which took place in February and July 2021. In both cases, after inviting her ex-boyfriend back to her apartment, and after having a few drinks, he had refused to leave and became violent. The tenant stated that her ex-boyfriend "becomes an animal" when he drinks and he fights with the tenant and damages her furniture. She again acknowledged that she was knocking on doors, but she stated that this was in search of help and not a deliberate attempt to disturb the other residents or the resident manager. And again, she testified that she had called the police, and she disputed the landlord's claim that anyone else had placed

those calls. She also disputed the landlord's claim that her ex-boyfriend had been arrested.

21. The tenant stated that the next incident happened on 25 October 2021, not 21 October 2021. The tenant claimed that her baby was being baptized that day and her ex-boyfriend, who is not allowed to see the baby, came to her unit to view a video of the baptism. The tenant reported that things again went sour as in the other cases—the ex-boyfriend started fighting with her, punched her in the face, he cut the wires to her cable and internet and damaged her TV and refused to leave. She stated that she again fled her unit seeking help, and acknowledged that she was knocking on the doors of the other residents in the complex.
22. With respect to the door, she claimed that it was not damaged by her, but rather the screws are merely loose and that it is the landlord's responsibility to have it repaired.
23. Regarding the complaints from 27 October 2021, the tenant denied that she had been making any noise, but she did point out that she does talk loudly. Regarding the police visit on that evening, the tenant again stated that she had called police so that she could give a statement to them about what had happened on 25 October 2021 so that she could file for an Emergency Protective Order (EPO). She now has that EPO and her ex-boyfriend is no longer allowed near her or the residential complex.
24. The tenant claimed that she had not had any problems since she had received the EPO and she pleaded with the landlord to give her one more chance. She claimed that her father is currently in hospital after suffering a stroke, that she is close to having her children returned to her, and that she is trying to set herself on a better path. She pointed out that she is set to enter the [REDACTED] run by the [REDACTED] in January 2022. She also stated that as a woman of colour it is difficult to find a new apartment because of the COVID-19 pandemic, and she also did not want to have to look for a new apartment so close to Christmas.

Analysis

25. 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.*

26. Most of the evidence provided by the landlord at the hearing was hearsay, or double hearsay, evidence—that is, evidence about what someone else had said, or, evidence about what someone else had recorded as being said by yet another party. Typically, that evidence is afforded little weight at these proceeding, and were that the only evidence to consider, it would be unfair for this Board to issue an order that would have such a serious consequences for the tenant.
27. Nevertheless, although the tenant did dispute the landlord’s claim about who had been phoning the police in the various incidents she had recounted, the tenant did not deny, but rather confirmed, that on the dates identified by the landlord, there were loud altercations taking place in her unit, which she described as instances of domestic violence, that there was yelling, that furniture was being damaged in her unit, and that she was knocking on the doors of the other residents at the complex.
28. Even if I agree with the tenant that she is the victim here, it was also not denied by her that in all of these cases, except possibly for the incident which occurred on 27 February 2021, her ex-boyfriend was a guest at her unit, and had been invited there by her. As a tenant is not only liable for her behaviour, but also the

behaviour of her guests, I have to conclude that the tenant is therefore indirectly responsible for the disturbances recounted at the hearing.

29. Although the landlord had not called any witnesses, the incidents described at the hearing would clearly be disturbing to the other residents who live in the apartments close to the tenant, and I find that that behaviour—the yelling, the fighting, the running in the hallways and knocking on doors—is unreasonable given that the tenant lives in such close proximity to these other residents in the complex.
30. I do accept the tenant’s claim that she has taken steps to prevent her ex-boyfriend from being in contact with her in the future and from again entering her property, and those steps will probably prevent the sorts of noisy and disturbing incidents that had been taking place over the past year.
31. However, in determining the validity of a termination notice issued under this section of the *Residential Tenancies Act, 2018*, I am not to speculate about how the tenant, or her guests, will behave in the future, but rather how she, and her guests, had been behaving leading up to 27 October 2021, the date the termination notice was issued. I have concluded that, leading up to that date, the peaceful and quiet enjoyment of some the other residents at the complex had been unreasonably interfered with and that the tenant is, in part, responsible.
32. As the termination notice meets all the requirements set out in this section of the *Act*, it is valid.

Decision

33. The landlord’s claim for an order for vacant possession of the rented premises succeeds.
34. 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

35. 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 paid \$14.88 to send the claim and notice of the hearing to the tenant by registered mail.
36. As the landlord’s claim has been successful, the landlord is authorized to retain \$34.88 of the security deposit she is holding.

Summary of Decision

37. 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 \$34.88 of the security deposit.

16 December 2021

Date

