

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0545-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:17 a.m. on 31-January-2022.
2. The applicant, [REDACTED] in trust, represented by [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant” did not attend.
4. The landlord provided a witness, [REDACTED] Resident Manager, hereinafter referred to as “the witness.”

Preliminary Matters

5. The tenant was not present or represented at the hearing and there wasn't a number available to reach him 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 he has been properly served. The landlord submitted an affidavit (LL#01) with their application stating that they had served the tenant with notice of the hearing, by email on 18-January-2022. 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.

Issues before the Tribunal

6. The landlord is seeking vacant possession of the rented premises.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 24: Notice where the tenant contravenes peaceful enjoyment and reasonable privacy.

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

9. The landlord submitted a rental agreement (LL#02) which included a lease amendment. Initially, the tenant took possession of the apartment with another tenant on 01-September-2021; for a year lease ending 31-August-2022. The other person moved in October and on 01-November-2021 the tenant became the sole lease holder, as per the lease amendment (LL#02), on the apartment. The rent is \$2,900 a month; pay own utilities. The rental period is from the 1st day to the last day of each month; with rent being due on the 1st day of each month.
10. The landlord served the tenant a “landlord’s notice to terminate early – cause” form, the reason was, interference with peaceful enjoyment and reasonable privacy. The notice was dated and signed on 08-November-2021 with a termination date of 14-November-2021. The landlord said that the notice was posted on the tenant’s door on 08-November-2021 and it was also sent to his email address on that date.
11. The landlord stated that there was an incident with the tenant during the early morning hours of 07-November-2021 and she submitted an incident report (LL#04) from the witness on that date.
12. The witness described the incident. He said that around 5:30 a.m. on the morning of 07-November-2021 that he started receiving phone calls from tenants on the same floor as the tenant. They said that there was a man in the hallway yelling out names, being vulgar and pounding on apartment doors. The witness told the callers to stay in their rooms and he’d come there right away.
13. When the witness arrived on the floor he could see the tenant roaming the halls, he thought that it was clear something was off about the tenant. The tenant was calling out and appeared aggressive. The tenant then pulled out a white substance from his pocket. The witness said he felt fearful and decided to leave the hall and call the police.
14. When the police arrived they had to call back-up the tenant was very violent and at least two officers were injured in the arrest. The police used both pepper spray and the Taser gun to subdue the tenant.
15. Once the tenant was arrested and left the building, an officer was posted to hold the scene, until a search warrant could be obtained.

16. The police told the witness that they had used pepper spray and the taser, which meant he should have the carpet cleaned and he should also make sure he disposed of the taser wire.
17. The witness said it was a Sunday, and he couldn't get a cleaner, so he vacuumed the hall, and washed down the walls and doors; the police told him that the pepper spray should dissipate within 24 hours. He also picked up taser wire and the police told him that he could dispose of the wire.
18. The other tenants on the floor opened their patio doors to air out the pepper spray.
19. The police searched turned up drug paraphernalia but the witness isn't aware of the exact evidence or subsequent charges.
20. The witness said the entire event took from 4 - 5 hours.
21. The landlord said that this was new territory for them. To the best of her knowledge, the tenant is still incarcerated, his is awaiting a trial and possible deportation. No one is staying in the apartment since the arrest, all of the tenants belongings are still there, and no rent has been paid since that time.
22. She is seeking vacant possession of the apartment due to interference with peaceful enjoyment.

Analysis

23. 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.

....

24. 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.

25. The situation described by the witness is definitely outside of normal everyday living. The tenants living on the floor of the incident, were awakened at 5:30 on a Sunday morning and then remained in their apartments while a violent arrest was occurring outside their doorways. It is reasonable to assume that this was a stressful and scary situation for all that were involved.
26. After the incident, the tenants were further impacted by, the police presence in the hallway and the pepper spray gas lingered and came into their apartments.
27. Section 24 of the Residential Tenancies Act, 2018: states

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.

28. The landlord's notice, as described in paragraph 10 was served to the tenant by both email and by positing it on his door on 8-November-2021 with a termination date of 14-November-2021.
29. I find that the tenant did interfere with the peaceful enjoyment of the other tenants in the building; the notice served by the landlord is a valid notice.
30. The tenant should have vacated the apartment on the 14-November-2021.

Summary of Decision

31. The landlord's claim for an order of possession of the rental premises succeeds.
32. The tenant should have vacated the property on 14-November-2021. The tenant is to vacate the property immediately.
33. 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

February 4, 2022

Date

