

Residential Tenancies Tribunal

Decision 19-0882-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:00 am on 08 January 2020 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], was represented at the hearing by [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* and policy 7 – 5: Peaceful Enjoyment.

Preliminary Matters

6. The landlord called the following witnesses:
 - [REDACTED] (“[REDACTED]”) – tenant in apartment [REDACTED], [REDACTED]
 - [REDACTED] (“[REDACTED]”) – tenant in apartment [REDACTED], [REDACTED]
 - [REDACTED] (“[REDACTED]”) – tenant in apartment [REDACTED], [REDACTED]

Issue 1: Vacant Possession of the Rented Premises

Relevant Submissions

The Landlord's Position

7. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant on 01 January 2019 and a copy of the executed lease was submitted at the hearing. That lease expired on 31 December 2019 and the agreement is now running on a month-to-month basis.
8. The landlord stated that she had received numerous complaints about the behaviour of the tenant since he moved into the unit. She stated that she has received complaints that the tenant is harassing people and verbally abusing them and she received complaints concerning noise coming from the tenant's apartment.
9. Because of these complaints, the landlord issued the tenant a warning letter on 30 July 2019 and a copy of that letter was submitted at the hearing (█ #4).
10. The landlord also stated that there was an incident in the early hours of 30 September 2019 where the tenant had tried to enter someone else's apartment.
11. At the hearing, the landlord called 3 witnesses who live at the complex with the tenant.
12. █ reported that in the early hours of the morning on 30 September 2019 she was awoken when she heard the tenant trying to enter her apartment. She testified that he was kicking at her door and was yelling for her to let him into "his" apartment. █ stated that the tenant lives on the opposite side of the complex but when she informed him that he was trying to enter the wrong apartment, he would not listen to her and continued kicking at the door and yelling for her to let him in.
13. █ stated that she was terrified during this incident and she claimed that the tenant had continued kicking at her door for about 45 minutes. She stated that the tenant only stopped after she had called a friend of hers who lived in another apartment who confronted the tenant and informed him that he was on the wrong side of the complex.
14. █ is █'s neighbour and he corroborated her claim that the tenant had been kicking at her door on that date and had been demanding that he be allowed into her apartment.
15. █, the tenant's neighbour, complained that she is often woken by noise coming from the tenant's apartment. She stated that he frequently has his radio turned up loud and he has visitors in his apartment. She stated that there was a time

when she was woken at 3:00 am in the morning and on another occasion at 2:00 am.

16. The landlord stated that because of these complaints that she had received, she issued the tenant a termination notice on 14 November 2019 and a copy of that notice was submitted with her application (█ #3). That notice was issued under section 24 of the *Residential Tenancies Act, 2018* (notice where tenant contravenes peaceful enjoyment and reasonable privacy) and it had an effective termination date of 20 November 2019.
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 acknowledged that he had been trying to get into █'s apartment on 30 September 2019. He denied that he had been kicking the door, though, and he claimed that when █'s friend had informed him that he was on the wrong side of the complex, he returned to his own room.
19. The tenant stated that he has prostate cancer and suffers from depression and he claimed that when this incident had taken place he had just taken about 9 or 10 different prescription pills. He stated that the medication had made him confused and he did not realize that he was in the wrong wing of the complex.
20. He testified that since that time, he has been to see his doctor and he now has his medication sorted out so that he does not suffer another one of these bouts. He pointed out that this was an isolated incident that happened on just one occasion.
21. Regarding the complaints about the noise coming from his apartment, the tenant stated that he only has a small radio and he usually does not have the volume turned up very loud. He also stated that he is typically in bed by 9:30 pm every night.
22. The tenant also pointed out that none of the landlord's witnesses gave any testimony about him being rude or claimed that he had been verbally abusing anyone.

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 -

(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.

24. With respect to the warning letter that was issued to the tenant in July 2019 (█ #4), that letter states that there have been complaints about the tenant harassing people and “saying bad things about them”. But the tenant is correct to point out that none of the witnesses gave any testimony at the hearing about incidents of that sort and for that reason I have to disregard those complaints.
25. Regarding the issue of the music coming from the tenant’s apartment, as reported by █, that testimony was contested by the tenant and there was no corroborating evidence submitted by the landlord (i.e., incident reports, warning letters, etc.) showing that this was a concern during this tenancy.
26. This leaves the incident which occurred on 30 September 2019. I accept █’s and █’s testimony about that incident and I find that the tenant been trying to get into █’s apartment and he had been kicking her door.


27. However, I was not persuaded that the tenant should be evicted, with just 5-days notice, based on that incident.
28. It was apparent from ■■■'s and ■■■'s testimony, and from the testimony of the tenant, that the tenant had mistakenly thought that it was his apartment he was trying to enter. But I find it probable, based on the testimony of the tenant, that the reason he had made that mistake was because he was confused as a result of the medications he had taken that night.
29. Although I accept ■■■'s claim that she was fearful on that night as result of the actions of the tenant, she testified that there have been no other similar incidents and she stated that she has had no other run-ins with the tenant since. The tenant also made the point that this was an isolated incident.
30. This Section's policy manual defines "interference with peaceful enjoyment" as an "ongoing disturbance or activity, outside of normal everyday living". Given that this was an isolated incident and given that it could plausibly be accounted for as a result of a mix-up in the tenant's medications, as opposed to a deliberate or vindictive act on his part, I was not convinced that it meets the threshold policy of an "ongoing disturbance" set by this Section.
31. For these reasons, the landlord's claim does not succeed.

Decision

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

31 January 2020

Date


John R. Cook
Residential Tenancies Tribunal