

Residential Tenancies Tribunal

Decision 19-0899-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 am on 04 December 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants”, did not participate.

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, 15, 19 and 24 of the *Residential Tenancies Act, 2018* and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenants were not present or represented at the hearing and I was unable to reach them by telephone from the hearing room. 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

respondents' absence so long as they have been properly served. The landlord submitted an affidavit stating that the tenants were served by text-message on 22 November 2019 and copies of those text-messages were submitted at the hearing, along with copies of other text-message exchanges the landlord had had with the tenants using those same cellular numbers. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issue 1: Vacant Possession of the Rented Premises

Relevant Submissions

The Landlord's Position

7. The landlord stated that she had entered into a monthly rental agreement with the tenants on 01 November 2018. The agreed rent is set at \$800.00 per month and the tenants had paid a security deposit of \$400.00.
8. The rental unit is a basement apartment and the landlord lives in the upstairs unit.
9. The landlord stated that there have been several ongoing issues with this tenancy: the tenants are consistently late paying their rent, the tenants complain frequently about normal daytime noise and there is a problem with fleas at the home.
10. Regarding the rent, the landlord stated that the tenants rarely pay their rent on time and she frequently has to remind them that their rent payments are due. She stated that she had already issued the tenants 2 termination notices for nonpayment of rent, in August and September 2019, but the tenants eventually paid the rent that was owing prior to the effective termination date set out in those notices.
11. The landlord stated that the tenants are currently in rental arrears once again for the month of December 2019.
12. The landlord also stated that the tenant, ■■■, recently got a new job where he works through the night and he returns to the unit early in the morning and sleeps during the day.
13. The landlord stated that she has 2 small children, one is 4 years old and the other is 18 months old. These children are at daycare on Tuesdays and Thursdays and they attend for a half-day on Wednesdays. Otherwise, during the day they are at home in the landlord's apartment, directly above the tenants' unit.
14. The landlord stated that since ■■■ has taken this new job, he has been constantly sending her text-messages during the day complaining about the noise coming

from her apartment. A copy of her text-message exchanges with [REDACTED] were submitted at the hearing ([REDACTED] #2).

15. Looking through those messages, I note that the landlord received complaints on 08, 14 and 21 September 2019, on 05 and 06 October 2019 and again on 15 and 20 November 2019.
16. The landlord argued that it was unreasonable for [REDACTED] to demand that she be quiet in her own home during daylight hours. She stated that she does normal daily activities in her home during the day and any noises that can be heard are what one would expect in a typical house. She also stated that her children sometimes make noises and drop things on the floors, but she argued that this has to be expected given that they are so young.
17. The landlord stated that the “straw that broke the camel’s back”, however, was the issue of the fleas. The landlord has a cat and a dog and on 05 November 2019 she discovered that they had fleas. She immediately took her pets to the vet on that day and had them treated.
18. As a courtesy, given that the tenants had pet cats themselves, the landlord sent a text-message to them informing them about the fleas that she had discovered on her pets and advising them to check theirs.
19. In response, the tenants told her that they had been dealing with a flea issue since the summer. In those text-messages, [REDACTED] writes that the issue was particularly bad over the summer but things seem to be getting better now that the weather is getting colder. [REDACTED] reports that he had been using flea medications and sprays as well.
20. The landlord stated that despite the fact that she had her animals treated by a vet she continued to find fleas on them. She took her dog to a dog groomer on 13 November 2019 and the groomer reported to her that there were significant number of live fleas still on the dog. The dog groomer shaved the dog, gave it a flea bath and flea spray.
21. The landlord stated that when she got home on that same day she again discovered fleas on her dog and after consulting with the dog-groomer, she determined that her home must be infested with fleas.
22. On 14 November 2019, the landlord contacted [REDACTED] again and informed him of her suspicions and requested that he share with her the costs of having the house fumigated by a professional exterminator. [REDACTED] replied that he has not seen any fleas in his apartment for some time and he instead recommended to the tenant some home remedies to deal with the situation.
23. The landlord suggested that the fleas she has found in her apartment and on her pets may have originated from the tenants’ apartment and she suspected that there may be an infestation there as well. She argued that had the tenants

informed her about the issue back in the summer when their pets first got fleas, she could have taken appropriate steps back then to prevent them spreading to her apartment and to her pets.

24. The landlord stated that she is constantly cleaning her apartment in an attempt to rid the unit of the fleas and she is finding it very stressful. She also submitted receipts at the hearing showing that she had incurred costs to purchase medicine and sprays for her pets (█ #3, #4, #5).
25. The landlord stated that the tenants' unit is fully furnished and she is also fearful that she will have to dispose of some of that furniture because of the issue with the fleas.
26. The landlord stated that because the tenants are constantly complaining about noise coming from her unit during the day and now because of the issue with the fleas, she is afraid to have anyone visit her apartment and she no longer arranges playdates for her children. She also pointed out that she has been bitten once by a flea and she is concerned that her children may get bitten too.
27. On 20 November 2019 █ again writes to the landlord complaining about the noise coming from her apartment during the day when he is trying to sleep and he writes that the landlord has a "100% lack of respect and courtesy".
28. On 22 November 2019 the landlord sent a termination notice to the tenants by text-message and a copy of that notice was submitted with her application (█ #1). 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 28 November 2019.
29. The landlord stated that the tenants have not vacated the unit as required and she is seeking an order for vacant possession of the rented premises.

Analysis

30. 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.*

31. I accept the landlord's claim that the tenants have not been paying their rent on time and on review of the submitted text-message exchanges, it seem that this is an ongoing issue. However, I am not persuaded that this matter can be considered to be an interference with peaceful enjoyment and a section 24 notice is not appropriate in these cases. Rather it would be more appropriate to deal with that matter in the ways contemplated in the *Residential Tenancies Act, 2018*—either assess late payment fees under section 15 or issue a termination notice for non-payment under section 19.
32. With respect to the issue of fleas, I accept the landlord's claim that she has never had an issue with fleas before. I find it probable that since the tenant's have been dealing with that problem over the past 5 or 6 months, their failure to completely rectify that issue in a timely manner and their failure to notify the landlord about that matter has contributed to the fleas spreading to her pets and to her apartment.
33. It would have been more reasonable for the tenants to have notified the landlord about the fleas when they were first discovered and to cooperate with her in her attempts to fumigate the house.

34. I also accept the landlord's claim that this matter has had an impact on her financially and that it is exerting an emotional toll on her as well. That, combined with the fact that she no longer has guests at her house as she is fearful of becoming angry with her because of routine daytime noise, has led to a depreciation in her quiet and peaceful enjoyment of her home.
35. For these reasons, I find that the landlord was in a position, on 22 November 2019, to issue the tenants a termination notice under this section of the *Act*.
36. As the notice meets the timeframe requirements set out here and as it was properly served, it is a valid notice.

Decision

37. The landlord's claim for an order for vacant possession of the rented premises succeeds.
38. The tenants 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

39. The landlord paid a fee of \$20.00 to file this application.
40. As the landlord's claim has been successful, she shall retain \$20.00 of the security deposit in compensation for that hearing expense.

06 December 2019

Date



John R. Cook
Residential Tenancies Tribunal