

Residential Tenancies Tribunal

Decision 19-0978-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:20 am on 29 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”, did not participate in the hearing.

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*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and there was no telephone number available where he could be reached. 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) a respondent 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 at the hearing stating that the tenant was personally served by a process server on 09 January 2020 and he has had 19 days to provide a response. 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.

7. The landlord called the following witnesses:
 - [REDACTED] (" [REDACTED] ") – tenant at [REDACTED]
 - [REDACTED] (" [REDACTED] ") – tenant at [REDACTED]

Issue 1: Vacant Possession of the Rented Premises

Relevant Submissions

8. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant on 14 November 2019 and a copy of the executed lease was submitted with her application ([REDACTED] #1). The agreed monthly rent is set at \$600.00 and it is acknowledged in the lease that the tenant had paid a security deposit of \$450.00.
9. The rental unit is adjoined to another house that the landlord also rents out and the landlord's witnesses, [REDACTED] and [REDACTED], rent out separate apartments in that house. The landlord also testified that although these are 2 separate houses, there is a shared basement.
10. The landlord testified that shortly after the tenant moved into the unit she started receiving complaints about the behaviour of the tenant from the residents in the adjoining complex.
11. She stated that she had received reports that the tenant had been throwing garbage and dinnerware out of his windows and onto the street below. It was also reported that he had been yelling at the residents in the adjoining complex from his window and had also been yelling at random passersby. She had also received complaints that the tenant is very loud and that there is a lot of yelling and arguing taking place in his unit at all hours of the night.
12. In support of her claim, the landlord submitted photographs which were taken in December 2019 ([REDACTED] #5, #6) showing garbage, cutlery, broken plates and clothing outside of his apartment. She also submitted a copy of a text-message exchange between [REDACTED] and another resident in the adjoining complex. That resident reports to [REDACTED] that the tenant had been in the shared basement and was trying to get into his apartment.
13. The landlord called [REDACTED] as a witness and she corroborated the landlord's contentions. She stated that she had witnessed the tenant throwing beer bottles out of his window and she has heard him yelling out of his window. She testified

that on one occasion when she was on the street outside of the tenant's unit, the tenant had thrown a beer bottle out of his window and then called ■■■ "a ■■■".

14. ■■■ also stated that she can hear a significant amount of noise coming from the tenant's apartment. That noise consists of yelling and arguments and the sounds of things being thrown around in the tenant's apartment.
15. ■■■ testified that she is fearful to walk past the tenant's window.
16. ■■■ was also called as a witness and he gave a similar account of the behaviour of the tenant as that provided by ■■■. He testified that every night the tenant is shouting out of his window or yelling on his telephone. He also complained that he can hear scraping on the floor of his room coming from the tenant's apartment, which is directly under his.
17. ■■■ stated that the tenant had been interfering with his peaceful enjoyment and he also stated that his girlfriend is fearful of the tenant. He stated that on 12 December 2019 he could hear the tenant in his apartment shouting that he was going to burn the whole block down and that he was going to bust the tenant's door down.
18. The landlord stated that because of these complaints, on 10 December 2019 she issued the tenant a termination notice 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* (notice where tenant contravenes peaceful enjoyment and reasonable privacy) and it had an effective termination date of 16 December 2019.
19. The landlord stated that the tenant has not vacated the rental unit as required and she is seeking an order for vacant possession of the rented premises.

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. I accept the landlord's testimony and the testimony of her witnesses in this matter. Based on that testimony, I find that the tenant had been yelling and causing loud disturbances in his apartment and that he had also been yelling out of his window. I also accept the testimony and evidence of the landlord's witnesses which establishes that the tenant had been frequently throwing items out of his window onto the street.
22. This type of behaviour is unreasonable and it is clearly interfering with ■■■'s and ■■■'s quiet and peaceful enjoyment of their rental units. Accordingly, I conclude that the tenant has not been complying with statutory condition 7(a), quoted above, and the landlord was in a position, on 10 December 2019, to issue the tenant a termination notice under section 24 of the Act.
23. As the termination notice meets the timeframe requirements set out in this section and as it was properly served, it is a valid notice.

Decision

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

25. 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

26. The landlord submitted a hearing expense claim form and a receipt for \$20.00 for the costs of filing this application and a receipt showing that she had paid \$50.00 to hire a process server.
27. As the landlord's claim has been successful, the landlord is authorized to retain \$70.00 of the security deposit.

05 February 2020

Date



John R. Cook
Residential Tenancies Tribunal