

## Residential Tenancies Tribunal

Decision 19-048-01

John R. Cook  
Adjudicator

---

### Introduction

1. The hearing was called at 9:05 am on 22 August 2019 via teleconference.
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 I was unable to reach her 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) 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 a respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as she has been properly served. With his

application the landlord submitted an affidavit stating that the tenant was personally served with notice of the hearing on 31 July 2019 and she has had 21 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 her absence.

## **Issue 1: Vacant Possession of the Rented Premises**

### **Relevant Submissions**

7. The landlord stated that he had entered into a 1-year, fixed-term lease with the tenant commencing 01 October 2018. The agreed monthly rent was set at \$830.00 and the tenant paid a security deposit of \$600.00.
8. The landlord stated that he had been receiving numerous complaints from other occupants at the complex about the behaviour of the tenant and he submitted affidavits at the hearing from 2 residents: TE and DD.
9. In DD's affidavit (KS #2), she writes that the tenant had committed a crime against her and that there is currently an open police investigation concerning that incident. The landlord stated that he has been informed by DD that the tenant had stolen \$3000.00 from her.
10. In TE's affidavit (KA #3), he writes that there have been numerous noise disturbances coming from the tenant's rental unit and he also writes that he has been reluctant to complain as he fears for his own well-being and safety.
11. With respect to the issue of noise, the landlord also submitted an incident report which had been filled out by his resident manager. In that report, the resident manager writes that he had also received complaints about loud noise coming from the tenant's apartment. In the report, the noise is described as being "like a war zone" with a lot of screaming, cursing and banging. That report also states that the RCMP were called to the complex because of this disturbance.
12. Because of these complaints, the landlord's resident manager issued the tenant a termination notice on 10 July 2019 (KA #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 16 July 2019.
13. The landlord stated that the tenant has not vacated the rental unit as required and he is seeking an order for vacant possession of the rented premises.

### **Analysis**

14. 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.*

15. With respect to the allegation that the tenant had committed a crime or that she had stolen money from DD, I find that not enough evidence was submitted at the hearing to allow me to make a determination about that matter. DD does not state in her affidavit that the tenant had stolen anything from her and there was no evidence establishing that the police had concluded that the tenant had committed any crime. No charges have been laid and the conclusions of the police investigation were not disclosed at the hearing.
16. However, I do find that the evidence submitted at the hearing establishes, on the balance of probabilities, that the tenant had been causing noise disturbances at

the rental unit and that these disturbances had been interfering with the peaceful and quiet enjoyment of some of the other residents at the complex.

17. Based on TE's affidavit and the report of the resident manager, I find that the landlord was in position, on 10 July 2019, to serve the tenant with a termination notice under s. 24 of the *Residential Tenancies Act, 2018*.
18. As the termination notice meets the timeframe requirements set out in the *Act*, it is valid.

### **Decision**

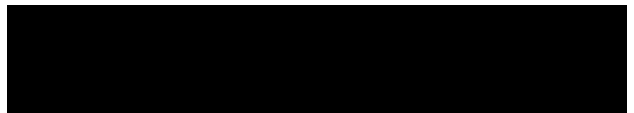
19. The landlord's claim for an order for vacant possession of the rented premises succeeds.
20. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

### **Issue 2 – Hearing Expenses**

21. The landlord paid a fee of \$20.00 to file this application. As the landlord's claim has been successful, the landlord is authorized to retain \$20.00 of the security deposit.

05 September 2019

\_\_\_\_\_  
Date



John R. Cook  
Residential Tenancies Tribunal