

Residential Tenancies Tribunal

Application 2024-0739-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 1:55 p.m. on 26-September-2024.
2. The applicant, [REDACTED], represented by [REDACTED] and [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant" attended via teleconference.

Preliminary Matters

4. The landlord's representative submitted an affidavit with their application stating that they had served the tenant with the notice of the hearing by prepaid registered mail, tracking number [REDACTED], on 26-August-2024 (LL#1). The landlord's representative submitted a copy of receipt that mail was sent on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There is a written month to month rental agreement which commenced in September-2013. Rent is \$263.00 per month due on the first of each month. A security deposit was never paid.
6. The landlord's representative amended the application to include hearing expenses.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for Vacant Possession of the rented premises.
 - Hearing expenses \$20.00.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

9. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 20: Notice where material term of agreement contravened and Section 12-1 of the *Residential Tenancies Policy*: Costs and Section 7-4 of the *Residential Policy Manual*: Breach of material term.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions:

10. The landlord's representative submitted a copy of termination notice under Section 20: breach of material term. The notice is signed and dated 1-April-2024, with a termination date of 31-May-2024 (LL#2). The landlord's representative submitted an affidavit stating that they served the tenant with the termination notice personally on 4-April-2024 at the residential premises (LL#3).

Landlord's Position:

11. The landlord's representative stated that since September-2022 the tenant had breached material terms of the rental agreement several times by damaging property and not keeping premises clean. Informal visits were made by the [REDACTED] to address these issues as they were reluctant to issue an eviction notice. The landlord's representative stated that since September-2023 the tenant had ongoing issues with garbage outside the unit and kept the house in a generally untidy condition. The landlord's representative stated that they received several complains from the neighborhood about a significant amount of garbage on the front deck of the tenant's unit and nearby areas. Given that the property is part of a row housing complex, this issue became more pronounced leading to increased concerns from neighbors.
12. The landlord's representative stated that they sent several warning letters to the tenant regarding the cleanliness of the property, specifically requesting that the garbage outside of the unit be properly disposed of and providing a solution: giving her information when the garbage collection day is, providing the tenant with garbage bags and asking the tenant to collect, and provide 3 quotes from garbage removal with the intention of reimbursing her for the expenses. The landlord's representative stated that the cleanliness letters clearly outlined their complaint, emphasizing that the tenant's failure to clean was a violation of Section 9(B) of the rental agreement, constituting a breach of material term. The landlord's representative submitted five copies of the letters to support the claim (LL#4).
13. Despite the landlord's ongoing efforts from September-2023 to May-2024 including cleanliness letters, issuing warnings, and attempting to resolve the matter, the tenant did not take any steps to address the problem, maintain the property or comply with the requests to clean and properly dispose of the garbage. As a result, the landlord issued a termination notice on 1-April-2024 and is now seeking vacant possession of the unit.

Tenant's Position:

14. The tenant expressed uncertainty about whether she had received the termination notice on 4-April-2024. The tenant did not dispute her failure to remove the garbage and maintain the cleanliness of the residential premises, however she argued that the landlord had not made sufficient efforts to assist her in resolving the issues.

Analysis

15. Section 20 of the *Residential Tenancies Act, 2018* states:

Notice where material term of agreement contravened

.....

(2) and paragraph 18(3)(b), where a tenant contravenes a material term of a rental agreement, the landlord may give the tenant written notice of the contravention, and if the tenant fails to remedy the contravention within a reasonable time after the notice has been served, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises.

(3) Where the tenant gives a landlord notice under subsection (1) or the landlord gives a tenant notice under subsection (2) that a rental agreement is terminated, the notice shall be given

(a) not less than 7 days before the end of a rental period where the residential premises is rented from week to week; and

(b) not less than one month before the end of a rental period where the residential premises is

(i) rented from month to month,

(ii) rented for a fixed term, or

(iii) a site for a mobile home.

(4) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the person providing the notice;

(b) be given not later than the first day of a rental period;

(c) state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and

(d) be served in accordance with section 35.

16. Section 7-4 of the *Residential Tenancies Policy Manual* states that a breach of a material term or condition occurs when either the landlord or the tenant fails to abide by the term or condition of the rental agreement. Where a landlord or a tenant commits a material breach, the other party may give written notice of the breach and identify a reasonable time for the breach to be remedied. Based on testimony, I find that the tenant's failure to remove the garbage and maintain the cleanliness of the residential premises constitutes a breach of a material term of the Section 9(B) of the rental agreement - "*The tenant shall keep the premises clean, and shall repair damage caused by a willful or negligent act of the Tenant or of a person whom the Tenant permits on the premises*". The tenant's testimony confirmed that she had not disposed of the garbage. Therefore, the landlord acted within their rights under Section 20 of the Act to issue a termination notice. I inquired whether the tenant had eventually complied by disposing of all the garbage after the termination notice was issued, and the landlord's representative stated that they conducted weekly visits to check on the property, and the garbage was never removed. In accordance with Section 20 of the *Residential Tenancies Act, 2018* as stated above, the termination notice was given not less than one month before the end of the rental period and meets the technical requirements of the Act and is a valid notice.

17. I find that the tenant should have vacated the property by 31-May-2024.

Decision

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

Issue # 2: Hearing expenses \$20.00.

Relevant Submission

19. The landlord paid \$20.00 for the application fee and is seeking reimbursement. The landlord's representative submitted a copy of the receipt to support the claim (LL#3).

Analysis

20. In accordance with Section 12-1 of the *Residential Tenancies Policy: Costs*, and as the landlord's claim was successful as per paragraph 16, the landlord will be awarded with \$20.00 compensation for application fee.

Decision

21. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

22. The tenant shall pay the landlord \$20.00 for hearing expenses.

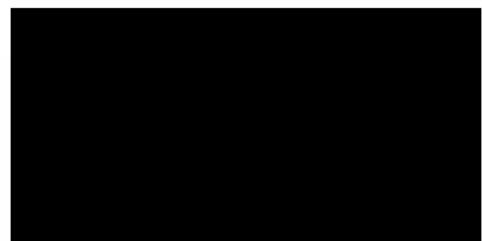
23. The tenant shall vacate the property immediately.

24. 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.

25. The landlord will be awarded an Order of Possession.

October 15, 2024

Date



Oksana Tkachuk, Adjudicator
Residential Tenancies Office