

Residential Tenancies Tribunal

Application 2024-0761-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 24-September-2024.
2. The applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as “the landlord”, attended via teleconference.
3. The respondents [REDACTED] and [REDACTED], hereinafter referred to as “the tenants”, did not attend.

Preliminary Matters

4. The tenants were not present or represented at the hearing and I was unable to reach them by telephone at the start of the hearing. 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 respondent's absence so long as he has been properly served. The landlord's representative submitted two affidavits with their application stating that they have served the tenants with the notice of hearing via prepaid registered mail tracking numbers [REDACTED] and [REDACTED] on 27-August-2024 (LL#1,2). 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. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, the hearing proceeded in their absence.
5. There is a verbal month-to-month rental agreement which commenced in 2015. Rent is \$845.00 per month, due on the first of each month. The landlord has stated that the tenants have vacated the rental unit, however he is seeking confirmation that it's documented that he can legally take possession of the property. A security deposit was paid in the amount of \$372.00 on 1-April-2015 and is in landlord's possession.
6. The landlord's representative amended the application to include hearing expenses of \$20.00.

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 10: Statutory Conditions, Section 18: Notice of termination of rental agreement and Section 22; Notice where tenant's obligation is not met. Also, relevant and considered in this decision are following sections of the *Residential Tenancies Policy Manual*: Section 7-1: Notice of Termination and Section 12-1: Recovery of Costs.

Issue # 1: Vacant Possession of the Rental Premises

Relevant Submissions

10. The landlord issued two termination notices to the tenants as follows:
 - Standard termination notice under Section 18 of the *Act* was signed on 31-July-2024 with the moving out date of 31-October-2024;
 - Termination notice under Section 22 of the *Act* due to the failure to keep premises clean and to repair damage was signed on 6-August-2024 with the moving out date of 12-August-2024.

Landlord's Position

11. The landlord's representative testified that they gave the tenants a standard termination notice on 31-July-2024 under Section 18: Notice of termination of rental agreement to vacate the premises on 31-October-2024. The landlord's representative stated that they served the tenants with the termination notice by sticking it to the door on 31-July-2024. The landlord submitted a copy of the termination notice to support the claim (LL#3).
12. The landlord's representative submitted a copy of the second termination notice that was given on a *Landlord's Notice to Terminate Early – Cause* form under Section 22; Notice where tenant's obligation is not met (LL#4). The landlord's representative stated that the notice was issued on 6-August-2024 to vacate the premises on 12-August-2024 and was served by sticking it to the door on 6-August-2024 and by giving it to the tenant's brother, [REDACTED], at the residential premises on that date.
13. The landlord's representative stated that they received multiple complaints from other tenants regarding the smoke and urine odor coming from the unit and that repeated flooding in the tenant's bathroom caused damage to downstairs apartment. As a result, a notice to enter the premises was issued on 12-July-2024, with the inspection scheduled for 15-July-2024 (LL#5). On that day, the landlord's representative inspected the unit and discovered a significant amount of dirt remaining in each room of the unit. The unit has experienced repeated flooding, which caused damage, specifically, the bathtub and toilet

had overflowed, leading the water damage in both the downstairs apartment and the tenant's unit. The landlord's representative reported that the tenants were smoking in the unit, which caused damage to the walls, in violation of their rental agreement. Additionally, during the inspection it was found that the tenants had four cats in the unit in violation of the rental agreement and one of the rooms was designated solely for the cats, rendering it unsanitary. The inspection revealed that the house was unclean and full of garbage, the cat's urine was present through the unit, the pervasive smell of cat's urine was very strong, smoke in the unit damaged the walls in the unit, and unsanitary conditions, including garbage, dirty clothes, and dirt, were evident throughout the unit. Following the inspection, the landlord's representative verbally requested that the tenants clean the unit. On 31-July-2024 a written request for repairs was issued to be completed by 5-August-2024 (LL#6). The demands were as follows:

1. Clean walls of smoke damage.
2. Pay/repair for water damage you caused in the lower unit \$1000.00 quote
3. Remove unauthorized cats from unit.
4. Clean unit of cat odor.

Upon reinspection on 5-August-2024, the landlord's representative found that no cleaning or repairs had been made, the smoke damage to the walls remained, the tenants had no paid \$1000.00 requested for repairs to the lower unit, nor had they removed the cats or cleaned the unit from urine odor. The landlord's representative stated that the conditions in the unit, including the unsanitary belongings, persisted. As a result, on 6-August-2024 the landlord issued a termination notice under Section 22 of the *Act*, requiring the tenants to vacate the premises by 12-August-2024. The landlord is seeking an order of eviction.

Analysis

14. Section 7-1 of the *Residential Tenancies Policy Manual*, Termination by More than 1 Notice states that if a termination notice is already in place and a second notice is issued by either party whereby the termination date is earlier than that specified in the first notice, then so long as this second notice is valid, the tenant is required to vacate on the date specified in the second notice. In accordance with Section 7-1 of the *Residential Tenancies Policy Manual* as stated above, I find that the latest termination notice under Section 22 of the *Act* dated 6-August-2024 will be taken into the consideration for the purpose of this decision.

15. The relevant subsections of Section 22 of the *Residential Tenancies Act, 2018* state:

Notice where tenant's obligation not met

22. (1) *Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 2 set out in subsection 10(1), the landlord may give the tenant notice requiring the tenant to comply with the condition.*

(2) *Where a tenant contravenes statutory condition 2 set out in subsection 10(1) within 3 days after the notice under subsection (1) has been served or within a reasonable time, 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 specific date not less than 5 days after the notice has been served.*

16. Also relevant is subsection 2 of Section 10 of the *Residential Tenancies Act, 2018* that state:

Statutory Conditions

10. (2) *Obligation of the tenant* - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or a person whom the tenant permits on the residential premises.

17. I accept landlord's testimony, as the tenants were not present at the hearing and therefore did not provide their own testimony. With regards to Section 22 as stated above, I accept the landlord's testimony that the tenants were not fulfilling their obligation to keep the premises clean. As the tenants did not comply with Section 10 of the Act as stated above, I find that the landlord was within his rights to give a termination notice under Section 22. Based on the testimony, it is evident that no cleaning or repairs had been made by the tenants, the smoke damage to the walls remained, the tenants did not repaired damages caused by water to the lower unit, nor had they removed the cats or cleaned the unit from urine odor after the tenants having been issued a request for repairs. The termination notice was given on the 6-August-2024 to vacate on 12-August-2024 which meets the requirements not less than 5 days after the notice has been served. For this reason, I find that the termination notice is a valid notice. I find that the tenants should have vacated the premises by 12-August-2024.

Decision

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

Issue # 3: Hearing expenses \$20.00.

Analysis

19. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee. The landlord paid \$20.00 for the application and is seeking reimbursement. As the landlord's claim has been successful, the tenants shall pay the hearing expenses.

Decision


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

Summary of Decision

21. The landlord shall retain \$20.00 from the security deposit to cover *hearing expenses*.
22. The tenants shall vacate the property immediately.
23. 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.
24. The landlord will be awarded an Order of Possession.

October 7, 2024

Date


Oksana Tkachuk, Adjudicator
Residential Tenancies Office