

Residential Tenancies Tribunal

Application 2024-0920-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was held on 28 October 2024 at 2:00 PM.
2. The applicant, [REDACTED] (the [REDACTED]), represented by [REDACTED], hereinafter referred to as "the landlord", attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not attend.

Preliminary Matters

4. The tenant was not present or represented at 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 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 she has been properly served. The landlord submitted an affidavit with the application stating the tenant was personally served on 11 October 2024 (LL#1). In accordance with the *Residential Tenancies Act, 2018* this is good service. 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.
5. There is a written monthly rental agreement which commenced in September 2022 (L#2). The rental premises is a one-bedroom apartment. Rent is \$310.00 per month, due on the 1st of each month. There was a security deposit of \$310.00 paid in September 2022, still in possession of the landlord.
6. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Issues before the Tribunal

7. The landlord is seeking an Order of Vacant Possession of the rental property.

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 (the Act)*.
9. Also relevant and referred to in this decision are Sections 20, 34 and 35 of the *Act*.

Vacant Possession of the Rental Premises

10. The landlord testified the tenant has been in the one-bedroom apartment since September 2022. Along with her application, the landlord supplied a copy of the written rental agreement (L#2). She stated on 15 November 2023, the janitor of the rental premise was called to assist medical personnel with the tenant as the tenant had fallen. During that situation, the landlord testified it was observed the tenant's apartment was unkept and not clean.
11. Following this situation, the board of Directors of the rental premises attended the tenant's apartment once a month to check on the rental premises. In May 2024, the staff of the rental premises cleaned the apartment of the tenant.
12. The landlord testified the tenant has failed to maintain the cleanliness of the apartment and the other 11 tenants of the rental premises have been complaining of the smell from the apartment of the tenant. The landlord stated since summer 2024, there have been situations when the tenant was urinating in the common areas of the apartment building, using the common area bathroom, leaving the area in an unhygienic state and knocking on the doors of the other tenants.
13. The landlord testified on 21 July 2024, the tenant was personally served a Landlord's Notice to Terminate Early- Cause under Section 20 of the *Residential Tenancies Act, 2018*, for a breach of a material term with a request for the tenant to vacate by 31 August 2024 (L#3).
14. The landlord testified the tenant suffered health concerns as she was aware the tenant had mobility issues related to her knee and bladder control issues. She stated the janitor of the rental premises did present her with pictorial evidence of the tenant's apartment being in an unkept state. No pictorial evidence was supplied with the landlord's application.

Analysis

15. The relevant subsections of Section 10 (1) of the *Residential Tenancies Act, 2018*, state:

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

...

2. Obligation of the Tenant-

The tenant shall keep the residential property clean and shall repair damaged caused by a willful act or negligent act of the tenant or a person whom the tenant permits on the residential premises.

...

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.

16. The notice was served under Section 20, of the *Residential Tenancies Act, 2018*, which states:

Notice where material term of agreement contravened

20.(2) Notwithstanding subsection 18(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.

17. The notice issued to the tenant on 31 July 2024, was served in accordance Sections 34 and 35 of the Act. The question is are the actions of the tenant a “willful or negligent acts”?

18. The landlord testified during the hearing she was aware the tenant experienced mobility concerns due to her knee. Furthermore, she stated the tenant experienced bladder control issues during the summer 2024. On the day of the hearing (28 October 2024), the landlord informed the undersigned prior to the start of the hearing, the tenant was in hospital. Those are viewed as mitigating factors.

19. As indicated above, under a Section 20 Notice of Termination, a landlord may give the tenant notice of the contravention. The landlord did not testify or supply as evidence to this Tribunal that a written notice had been issued to the tenant regarding the cleanliness of the rented premises.

20. The landlord testified there had been pictorial evidence supplied to her by the janitor of the rental premises. This pictorial evidence was not supplied to this Tribunal.

21. As indicated herein paragraph 6, the applicant has the burden of proof. Viewing the evidence in its totality, the landlord has failed to meet the evidentiary onus.

Summary of Decision

22. The landlord's claim for vacant possession does not succeed.

27 November 2024
Date



Michael J. Reddy
Residential Tenancies Office