

Residential Tenancies Tribunal

Application 2022-No.86-NL

Decision 22-0086-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:16 a.m. on 07-March-2022.
2. The applicant, [REDACTED], was represented by [REDACTED], hereinafter referred to as "the landlord." He attended by 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 and there was no phone number to reach him 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 submitted an affidavit (LL#01) with his application stating that another property manager, [REDACTED], had served the tenant with notice of the hearing, personally on 10-February-2022. 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.

Issues before the Tribunal

5. The landlord is seeking vacant possession of the rental premises.

Legislation and Policy

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

7. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions and Section 22: Notice where tenant's obligation not met.

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

8. The landlord said that the tenant has lived in their rentals for a number of years. In the past there has been issues that have arisen and the tenant has moved into a different rentals that they hold.
9. The landlord said that the tenant moved into the current house on 01-September-2020. They have a verbal rental agreement for a monthly term. The tenant pays \$745.00 a month for the house; utilities are not included. The rental period is from the 1st day of the month to the last with rent being due on the first. The tenant paid a security deposit of \$372.00 when he first rented with them and this deposit is now applied to the current house, the landlord is still in possession of the deposit.
10. The tenant is considered to be aggressive and potentially violent by the landlord. There have been a number of issues with the tenant's care of the property.
11. On -12-August-2021 the landlord's served the tenant a "Landlord's request for repairs." (LL#02) The form is dated and signed on 12-August-2021 with a completion date for repairs of 16-August-2021. The landlord's list of repairs required are: repair drywall, clean kitchen, and remove garbage from the back deck, interior and basement.
12. The landlord said that on 18-August-2021, himself, the property manager [REDACTED] and two maintenance people went to the house. They brought a number of people due to safety concerns with the volatility of the tenant. They only entered the house enough to determine that none of the work had been completed.
13. On 18-August-2021 they returned with a termination notice (LL#03). The notice is on a Landlord's notice to terminate early – cause form; for failure to keep the place clean and repair damage. It is dated for 18-August-2021 with a termination date of 24-August-2021. He said that they posted on the door.
14. The landlord stated that the tenant told him that he was never going to move. They would have to find him another place to live and he wanted a place of his own; he would not move into a shared place.
15. The City of [REDACTED], has ticketed the landlord due to the garbage built up around the premises. The landlord said that in addition to the aggression of the tenant, the premises and the yard is completely full of garbage, broken furniture and bags of clothing. These items are mixed in with drug paraphernalia and used needles.

16. 06-November-2021 the landlord, once again served the tenant with a “Landlord’s request for repairs.” (LL#04) The form is dated and signed on 06-November-2021 with a completion date for repairs of 10-November-2021. The landlords required that the front bedroom window be repaired. This was not done.
17. On 11-November-2021 the landlord, [REDACTED] and the two maintenance staff returned again. They once again served the tenant with a Landlord’s notice to terminate early – cause form; for failure to keep the place clean and repair damage. The notice is dated for 11-November-2021 with a termination date of 17-November-2021. He said that they posted on the door, knocked and then stepped back from the step. He said that they watched the tenant take the notice off the door.
18. The tenant continues to live there.
19. The landlord had hoped the issue would resolve itself, he said that the tenant’s name has appeared on the court docket with lengthy charges, he had believed that the tenant would be incarcerated and that there would no longer be an issue.
20. The city has ticketed them because of the garbage around the house and the broken windows. Since he gave the tenant a request for repair for the front window he has learned that the kitchen window and the front and back doors are also broken.
21. He said that he has virtually no access to the property and the tenant has people watch the property whenever the tenant has to leave. The landlord said that they watch the property to ensure that the landlord doesn’t enter or change locks. About three months ago, during the tenant’s scheduled court appearance, the landlord’s did go in and remove some of the debris in the yard. He said that they took out 6 chesterfields, 5 bed sets and numerous bags of clothes. They removed 7 truckloads of garbage that day.
22. The landlord is requesting an Order of Possession.

Analysis

23. As per Section 10 of the *Residential Tenancies Act, 2018*,

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 premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

24. The tenant is responsible to keep the premises clean and repair damages, based on the testimony of the landlord, the tenant is in violation of the Act.

25. The landlord served the tenant a request for repairs and a termination notice on two occasions in accordance with *Section 22 of the Residential Tenancies Act, 2018*.

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 specified date not less than 5 days after the notice has been served.

(3) 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.

26. Both of the termination notices that the landlord served on the tenant are valid and the tenant should have moved after the first notice dated 24-August-2021.

Decision

27. The landlord's claim for an order for vacant possession of the rental premises succeeds.
28. The tenant should have vacated the property on 24-August-2021. The tenant is to vacate the property immediately.
29. The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sherriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession.

Issue 2: Hearing expenses reimbursed \$20.00

30. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#06) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant. The landlord shall retain the \$20.00 from the security deposit.

Summary of Decision

31. The landlord's claim for an order for vacant possession of the rental premises succeeds.
32. The tenant should have vacated the property on 24-August-2021. The tenant is to vacate the property immediately.
33. The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sherriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession
34. The landlord shall retain the \$20.00 from the security deposit for reimbursement of their hearing expenses.

March 8, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office