

Residential Tenancies Tribunal

Application 2022 No. 221NL

Decision 22-0221-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 12 April 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. The tenant, [REDACTED], hereinafter referred to as “the tenant”, was not in attendance.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for repairs to be carried out at the rental property, and
 - 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, 21 and 22 of the *Residential Tenancies Act, 2018*, the *Occupancy and Maintenance Regulations* issued under the *Urban and Rural Planning Act*, and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and there was no telephone number provided where he could be reached by phone. 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. With his application, the landlord submitted an affidavit stating that tenant had been personally served with the application on 31 March 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.

Issue 1: Repairs to be Carried Out

Relevant Submissions

7. The landlord stated that he had entered into a monthly rental agreement with the tenant on 10 December 2021. The agreed monthly rent was set at \$475.00 and the landlord testified that the tenant had paid a \$100.00 security deposit when he moved into the unit.
8. The landlord stated that in March 2022, he discovered that the door to the tenant's unit was badly damaged and he pointed to his submitted photographs to substantiate that claim (■■■ #1, #2). The landlord stated that the tenant had informed him that his nephew had accidentally locked himself in his unit and the tenant then kicked the door in to release him.
9. Because of that damage, the landlord issued the tenant with a Landlord's Request for Repairs notice on 12 March 2022 (■■■ #3). According to that notice, the tenant was required to have the door replaced, and painted, by 19 March 2022. The landlord testified that the tenant has not carried out that work, and the door is now in a worse condition than it was when he issued the notice.
10. The landlord is seeking an order requiring that the tenant carry out that work.

Analysis

11. Statutory condition 2, set out in section 10 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:

...

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.

12. I accept the landlord's claim that the tenant had damaged the door to his rental unit, beyond repair, and that that door now needs to be replaced. I also accept the landlord's claim that the tenant had not complied with his request to have that door replaced.
13. Section 47 of the *Residential Tenancies Act, 2018* outlines the following powers of the director:

Order of director

47. (1) After hearing an application the director may make an order

(a) determining the rights and obligations of a landlord and tenant;

...

(c) requiring a landlord or tenant who has contravened an obligation of a rental agreement to comply with or perform the obligation;

14. Based on the foregoing, I make the following order:

Decision

15. The tenant shall install a newly painted door for his rental unit.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

16. The landlord stated that because the tenant had not replaced the damaged door, as required by his notice, he issued him a termination notice on 21 March 2022, and a copy of that notice was submitted with his application (█ #4). That notice was issued under section 22 of the *Residential Tenancies Act, 2018* (notice where tenant's obligation not met), and it had an effective termination date of 28 March 2022.
17. The landlord also complained, though, that the tenant had been using drugs at the unit and he had left syringes lying around in the common areas. He claimed that this was a hazard to the other residents at the complex. The landlord also complained that a guest of the tenant moved into one of the rooms at the complex, without his permission, and he also stated that the tenant is keeping a

pet dog in his room, even though there is a no-pet policy in place. Additionally, the landlord testified that the tenant had taken down the smoke detectors at the complex and he had removed their batteries.

18. Because of those issues, on 29 March 2022, the landlord served the tenant with a second termination notice. This second notice was issued under section 21 of the *Residential Tenancies Act, 2018* (notice where premises uninhabitable) and it had a termination date of that same day.
19. The landlord stated that the tenant has not moved out, as required, and he is seeking an order for vacant possession of the rented premises

Analysis

20. With respect to the first notice, section 22 of the *Residential Tenancies Act, 2018* states:

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.*

21. I have already determined in the previous section that the tenant had damaged the door to his unit and that he had not complied with the landlord's written request to have it replaced. Accordingly, I agree with the landlord that he was in a position, on 21 March 2022, to issue to the tenant a termination notice under this section of the *Act*. As that notice meets all the requirements set out here, it is valid and the tenant ought to have moved out on 28 March 2022.

22. Even though there was no need to issue a second notice on 29 March 2022, as the first one issued just a week earlier was valid, I find that this one, too, was valid.
23. In [REDACTED], the municipality where this rental unit is located, the “minimum standards and regulations for the occupancy and maintenance of residential property” are to be found in *Occupancy and Maintenance Regulations*, issued under the *Urban and Rural Planning Act*.
24. According to those *Regulations*:

Occupancy

4. (1) A person shall not occupy for human habitation or otherwise, or be the owner of, permit to be occupied for human habitation or otherwise, a dwelling or structure which does not conform to the standards set out in these regulations.

25. In short, a rental unit that is not maintained in accordance with the standards set out in those *Regulations* is not to be used by a person as a dwelling unit and is, therefore, “unfit for habitation.”
26. With respect the issues of the tenant keeping pets and the fact that a guest of his is living at the complex without the landlord’s permission, I was not persuaded that those issues made the unit unfit for habitation, although they may be violations of the rental agreement. I was unable to find any rules or regulations concerning the improper disposal of syringes in a private dwelling that would render it unfit for habitation, either.
27. Smoke detectors, however, are required in all dwelling units. Section 8 of these *Regulations* states:

Fire prevention

8. (4) Smoke alarms conforming to the standards set out in the National Building Code shall be installed in every dwelling unit and in accordance with the requirements of the National Building Code, in all other buildings.

28. As the smoke detector was taken down by the tenant and its batteries removed, the unit was clearly in violation of this section of the *Regulations* and the tenant had therefore made the unit unfit for habitation.
29. Section 21 of the *Residential Tenancies Act, 2018* states:

Notice where premises uninhabitable

21. (1) *Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes statutory condition 1 set out in subsection 10(1), the tenant may give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises effective immediately.*

(2) *Notwithstanding subsection 18(2) and paragraph 18(3)(b), where an action of, or a failure to act by, a tenant makes a residential premises unfit for habitation, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises effective immediately.*

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

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

(b) state the date 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

(c) be served in accordance with section 35.

30. As the tenant had made the rental unit unfit for habitation, I find that the landlord was also in a position, on 29 March 2022, to issue the tenant a termination notice under section 21 of this Act. As the landlord's notice meets all the requirements set out in this section of the Act, that notice is also valid.

Decision

31. As the termination notices issued to the tenant on 21 March and 29 March 2022 are valid notices, the landlord's claim for an order for vacant possession of the rented premises succeeds.
32. 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 3: Hearing Expenses

33. The landlord submitted a hearing expense claim with his application and a receipt for \$20.00 for the costs of filing this application. He is also claiming \$150.00 for the costs of travelling to the rental unit to deliver to the tenant the application and notice of hearing.

34. As the landlord's claim has been successful, the tenant shall pay the landlord's hearing expense of \$20.00 for the application fee. Policy with this Section is that an applicant may only claim \$25.00 for the costs of personally serving the tenant with the application.

Decision

35. The landlord shall retain \$45.00 of the security deposit to cover his hearing expenses.

Summary of Decision

36. The landlord is entitled to the following:
- An order for vacant possession of the rented premises,
 - The tenant shall also 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.
 - The landlord is authorized to retain \$45.00 of the security deposit.
37. The tenant shall install a newly painted door for his rented room.

13 April 2022

Date


John R. Cook
Residential Tenancies Tribunal