

Residential Tenancies Tribunal

Applications: 2022 No. 0223 NL
2022 No. 0290 NL

Decision 22-0223-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:07AM on 26 April 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "landlord1", participated in the hearing.
3. The applicant, [REDACTED], hereinafter referred to as "landlord2", participated in the hearing.
4. The respondent, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing.
5. An affidavit of service was provided by both the landlords (L#1) and the tenant (T#1) confirming that each were served of their respective claims.
6. The details of the claim were presented as a longstanding rental agreement since at least 2008, if not 2003. The original term was for one year, and is currently a month-to-month agreement with rent set at \$975.00. A security deposit in the amount of \$374.00 was acknowledged by both parties as having been collected at the start of the tenancy.
7. In a proceeding under the *Residential Tenancies Act*, 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 applicants have to establish that their account of events is more likely than not to have happened.

Issues before the Tribunal

8. The landlords are seeking vacant possession of the rental premises.
9. The tenant is seeking the following:
 - Validity of termination notice determined; and
 - Possessions returned.

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
11. Also relevant and considered in this case is sections 10 and 22 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

12. The tenant resides in the top floor of a two story bungalow owned by the landlords. Access to this unit is from the back of the building. There is a separate rental unit in the main floor of the building that is accessed from the front.
13. The landlords have owned the rental premises and served as landlord to the tenant for the entire duration of her multi year tenancy (since at least 2008).

Issue 1: Return of Possession

Tenant's Position

14. The tenant is seeking the return of the following which she claims were removed from the property when her rental unit was accessed by the landlords and others on 9 March 2022 (T#2):
 - Black tower water fountain (est value \$60)
 - Vintage tablecloth (est value \$60)
 - Picture of a woman (est value \$20)
 - Red lace tablecloth (est value \$5)
 - 3 wooden picture frames (est value \$20)
 - Electric skillet (est value \$35)
 - Snake print shoes (est value \$24)
 - Extension cord with surge protection (est value \$19)
 - Cell phone charger (est value \$19)
 - Food (est value \$26)
 - Green sweater (est value \$40)

15. The total estimated value of these items is said to be \$328.00.
16. The tenant testified that the items were missing after the landlords entered her apartment with their handyman for the purpose of cleaning and painting the interior of the rental premises.
17. The tenant initially stated that she was not aware that her unit would be entered on 9 March 2022. However, she later testified that she had “too much”, that she needed help with removing items and that landlord1 would help her clean. She further stated that she regularly communicated with landlord1 and was actively involved in planning related to 9 March 2022 and that she was involved throughout the day.
18. As to how or why the items may have gone missing on 9 March 2022, the tenant stated that she left items on the table and that these items were not to be removed. However, she alleges that these items were put in the garbage and removed by the landlords’ worker who was involved on 9 March 2022. The tenant stated that landlord1 left and was not present in her unit throughout the day on 9 March 2022.
19. The tenant was not able to provide pictures or receipts related to any of these items. She stated that most of them were received as gifts, or were considered family heirlooms.

Landlord’s Position

20. Landlord2 stated that notice was always provided to the tenant, in accordance with the Act, detailing when and why her unit would be entered.
21. Specific to the tenant’s unit being entered on 9 March 2022, landlord1 stated that she had spoken to the tenant by phone a week prior and that together, they selected the day and time for the tenant’s unit to be entered for the purpose of removing excess garbage and debris.
22. Landlord1 testified that [REDACTED] was involved throughout the time that her unit was occupied by herself and the workers. She stated that 75 commercial garbage bags were filled during that time from the tenant’s unit and that the tenant was responsible for paying a separate party, [REDACTED], who was directly involved on 9 March 2022 in the bagging and bag removal process.
23. Landlord1 testified that she was not involved in collection or removal activities, that she was solely occupied with identifying and documenting issues needing repair. Landlord2 supported this testimony and referred to a witness affidavit that was submitted from [REDACTED] outlining his involvement on that day (L#7).

Analysis

24. The tenant is seeking cost of replacement of possessions removed from the rental unit by the landlords and their worker. However, no evidence was presented to establish that the tenant's belongings existed and or were removed by either landlord on that 9 March 2022.
25. Subsection 10(5) of the *Act* sets out requirements for access of tenant units:
 - 5. Entry of Residential Premises - Except in the case of an emergency, the landlord shall not enter the residential premises without the consent of the tenant unless*
 - (a) notice of termination of the rental agreement has been given and the entry is at a reasonable time for the purpose of showing the residential premises to a prospective tenant or purchaser and a reasonable effort has been made to give the tenant at least 4 hours' notice;*
 - (b) the entry is made at a reasonable time and written notice of the time of the entry has been given to the tenant at least 24 hours in advance of the entry; or*
 - (c) the tenant has abandoned the residential premises under section 31.*
26. The landlords refute claims from the tenant of removal by their hands or their agent. They both testified that the tenant worked only with a person they supplied to assist the tenant with clean up, and that the tenant directly paid this person (████████) for his services.
27. I accept the testimony from both landlords that they were in no way involved in the physical removal of actual items from the tenant's unit. They supported planning and logistics, but they did get involved in the actual work.
28. The tenant provided contradictory evidence regarding the circumstances surrounding her missing possessions. First she claimed her unit was entered without her permission, and then she acknowledged that she was an active participant on the days her unit was entered by the landlord1 and their workers. Together, this inconsistency in her testimony along with her lack of receipts and or proof of the items said to be missing, weigh against the claims made by the tenant.

Decision

29. The tenant's claim for an order for payment in compensation for missing possessions does not succeed.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

30. The rental unit is the top floor of a two storey bungalow. The unit itself is approximately 23 x 24 feet, with two bedrooms, a kitchen, a dinning room, a bathroom, and a laundry room. There is a 10 x 12 foot deck by the stairs to the main door of the building, and there is also a patio that is accessed from within the unit. Access to the patio is however blocked by the landlords due to safety concerns regarding the tenant's use of the patio space. These concerns are not related to the structural integrity of the patio.
31. The importance of exact timelines quickly became apparent in the course of this hearing. As such, I gave leave to the landlords to provide an exact timeline of their activities within the tenant's rental unit during March and April 2022. This timeline was submitted via email to the Landlord Tenant office by the following day (L#2).
32. As noted in Issue 1 – Return of Possessions, the tenant's rental unit was entered by the landlords and their worker on 9 March 2022 for the purpose of cleaning and painting the unit. Landlord2 later clarified that they also attended to the tenant's unit on March 9, 10, 11, 15, 16 and 17 for the purposes of addressing "some immediate and urgent repairs, as well as to do timely and necessary checks on the extermination bait stations in order to combat the mice and rodent problem" (L#2).
33. It was at some point during this time that landlord1 stated that she constructed a "possible" termination notice for the tenant so as to "demonstrate" to her what would happen if her unit was not cleaned up and her birds not removed.
34. Landlord2 communicated independently with a possible new owner for the tenant's birds. This new owner was ready and willing to take these birds. However no exchange of birds occurred. The tenant reported feeling bullied by the landlords. The tenant testified that she has owned the birds for 5 years and has kept them within the rental unit during this time. The noise of the birds was evident throughout the teleconference proceedings.
35. The tenant applied to this tribunal on 16 March 2022. This application was for return of possessions and validity of termination notice determined.
36. Evidence of a Landlord's Request for Repairs, submitted to the tenant on 20 March 2022 (L#3) was provided by both the landlords and the tenant. The tenant was to fulfill this request by 25 March 2022.
37. This list of repairs was extensive and included:
 - Complete plaster, sand, prime and paint to original colours in the unit;
 - Removal of all garbage and debris;

- Removal and replacement of all flooring throughout the unit;
- Professional extermination services;
- Repair of rodent related holes in walls;
- Replacement of all window blinds;
- Deep clean of fridge and stove;
- Replacement of countertop;
- Sand and stain kitchen cabinets;
- Replace electrical switch plates;
- Repair or replace bathroom closet door;
- Immediate removal of two birds.

38. The tenant did not substantially action the landlords' request for repairs.

39. The tenant submitted a termination notice with her application (T#3). This notice was dated 31 March 2022 with an effective date of 15 April 2022. The two reasons cited for this notice were:

- Failure to keep the premises clean and to repair damage (S. 22 of the *Act*);
- Interference with peaceful enjoyment and reasonable privacy (S. 24 of the *Act*).

40. The landlords submitted their application to this tribunal on 8 April 2022. Their application was for Premises Vacated and they submitted a termination notice that was dated the same (L#4). This notice was issued under section 22 of the *Act* for failure to keep the premises clean and to repair damages and it had a move out date 15 April 2022. The landlords testified that this notice, was the true notice of termination to the tenant.

41. Landlord2 provided photographs of three **Landlord's Notice to Enter Premises** that had been issued to the tenant in advance of their entering the rental unit on April 13 and 19, 2022 for the purposes of conducting necessary renovations in the unit (L#2).

42. The tenant stated during the hearing that she was packed ready to move out at the end of the month (30 April 2022).

43. Landlord2 stated that the tenant had previously indicated she would vacate the rental unit on or before 15 April 2022. However, both landlords stated that the tenant has not moved out, as required.

44. The landlords are seeking an order for vacant possession of the rented premises

Landlord's Position

45. Landlord1 stated that they collect rent in person by visiting the rental premises monthly. When asked to provide exact dates for when they were last inside the tenant's rental unit, prior to 9 March 2022, she was unsure. Landlord1 testified

that the tenant would regularly meet them outside of her unit for the purposes of paying rent.

46. Landlord2 testified that the tenant's birds are contrary to their rental agreement which stipulates no pets on the premises. She further testified that they only "recently" became aware of the birds because they heard them tweeting.
47. When asked to clarify "recently" landlord2 stated that she previously provided support work to the former tenant of the downstairs unit of the rental premises. It was through her work, until November 2021, from this site, that she could hear the birds.
48. Landlord2 testified that she and landlord1 became increasingly concerned about the state of the tenant's rental unit while completing renovations in the downstairs unit of the rental premises. They both provided testimony regarding the cigarette smoke, rodents and constant bird seed that would appear in the downstairs unit.
49. Landlord1 spoke of garbage and debris noted onsite in the rental premises that was visible from the windows of the tenant's unit when collecting rent.
50. The landlords provided three witness affidavits with their application, including:
 - [REDACTED] – potential renter of the tenant's rental unit (L#5)
 - [REDACTED] – long time building maintenance worker (L#6)
 - [REDACTED] - participated on 9 March 2022 (L#7)
51. One of the witnesses, [REDACTED], was called to the hearing to provide sworn testimony. He testified that he had visited the tenant's rental unit in early April 2022 as the tenant indicated that she would be vacating the premises on 15 April 2022. The witness however testified that he had vocally declared his doubt during the visit, that the tenant would in fact vacate the premises as intended. As reasons for this, he said the unit looked like a scene from the "Hoarders" TV show, it smelled heavily of cigarettes and urine, and that he saw birds flying around inside the unit. The witness spoke of what he perceived as a negative attitude from the tenant towards the rental unit and further testified that he offered to serve as a witness because he was so struck by the kindness of the landlords. He stated that he is not a tenant of the landlords.
52. The building support worker highlighted concerns, in his witness affidavit, with extensive smoke damage and other physical damage to the unit. As well, he identified the "stench of cigarette smoke as well as the strong smell of human urine and human feces and rat urine and rat feces". Bird seed was also said to be everywhere in the unit. He wrote how the tenant is "very destructive and violent" and that "damages done to the apartment were in every room".
53. The participant in the 9 March 2022 cleanup, wrote in his witness affidavit, that he was hired to "help a client remove garbage and hoarding items". He worked for 9 hours on that day and packed and got rid of 75 big commercial bags of

garbage. He wrote that the tenant's apartment "was one of the dirtiest places [he has] ever seen. There were dead mice everywhere, rat nest in the cupboard, under door boards in the wall and even in the appliances". He also wrote how the "garbage was everywhere and birdseed everywhere" that the tenant "had no respect for anyone there" and that she was "putting paper and cigarette butts into electrical outlets and removing smoke detectors and putting cigarette butts in there".

54. When asked how the three witness affidavit's came to be submitted, landlord2 testified that [REDACTED] was contacted and asked if he was willing to submit an affidavit regarding their claim, which he did. Landlord2 also stated that they typed up the witness statements as dictated to them by their maintenance worker and the 9 March 2022 clean up participant.
55. In support of their own testimony as well as the testimony of their witnesses, the landlords submitted two sets of pictures. One series of 14 images (L#8) showed a considerable level of filth, birdseed, rodent droppings and surplus belongings throughout the rental unit. The second series of 11 images (L#9) captures other areas of the apartment. Both sets of pictures depict an uncommon level of disarray, extreme clutter and hoarding throughout the unit.
56. When asked where the tenant is to smoke if she is not allowed on the patio, landlord2 stated that there is a sizable deck adjacent to the main entrance to the tenant's unit and that this would be considered a convenient place to smoke.

Tenant's Position

57. The tenant testified that she has kept the birds within her rental unit for the past five years. She stated that she got the birds in response to noises she would hear through the floor from a previous tenant of the downstairs rental unit.
58. The tenant testified that there are long standing issues with rodents at her rental unit and that the landlords were previously active in hiring an exterminator to attend to the entire rental premises. The tenant acknowledged that the rodent issue has gotten worse.
59. The tenant did not dispute that she smoked heavily in the rental unit.
60. When asked how she would describe her rental unit (e.g., clean and organized, or messy and cluttered) the tenant stated that her unit is organized with items packed in totes that are stacked in piles. The tenant also stated that the unit has been in bad shape since she moved in. She stated that the floor is worn and the window is broken (window to the aforementioned patio door).
61. The tenant spoke to the testimony provided by the Witness, [REDACTED]. She stated that she does not remember meeting [REDACTED] and she expressed doubt regarding his motivations for providing the witness testimony.

62. The tenant then abruptly left the hearing.

Analysis

63. 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.

64. Statutory Condition 2 of subsection 10(1) of the *Residential Tenancies Act, 2018* states:

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.

65. According to landlord2's records, on 8 April 2022, the day the termination notice was issued, the tenant had not substantially kept the premises clean or repaired damage. Furthermore, the tenant had failed to action the documented landlords' request for repairs that had been submitted on 20 March 2022 to the tenant.

66. Furthermore, the landlords provided extensive witness testimony along with multiple pictures of the tenant's unit. Together this evidence established without a doubt, a level of mess, disarray and damage across the rental unit that far exceeds regular use, even for 13 plus years of use, of a rental unit.

67. As the notice meets all the requirements set out in this section of the Act, and as it was properly served, it is a valid notice

Decision

68. The landlords' claim for an order for vacant possession of the rented premises succeeds.

69. The tenant shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

Issue 3: Hearing Expenses

70. Landlord1 claimed \$20.00 for the expense of applying for the hearing.

71. As their claim has been successful, the tenant shall pay this hearing expense.

Summary of Decision

72. The landlord is entitled to the following:

- An order for vacant possession of the rented premises,
- The tenant shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

2 May 2022

Date



Jaclyn Casler
Residential Tenancies Tribunal