

Residential Tenancies Tribunal

Applications: 2022 No. 0253 NL

Decision 22-0253-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 2:01PM on 11 May 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "landlord1", participated in the hearing. The landlord's husband, [REDACTED], hereinafter referred to as "landlord2" also participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "tenant1", did not participate in the hearing.
4. The respondent, [REDACTED], hereinafter referred to as "tenant2" did not participate in the hearing. It was noted during the hearing, that tenant2 was incorrectly identified as [REDACTED] in all documentation provided by the landlord to this tribunal.
5. An affidavit of service was provided by landlord1 (L#1) confirming that tenant1 was served of the claim. When asked if tenant2 was also served, landlord2 testified that service occurred in person, at the front door of the rental premises, and that tenant2 was standing behind tenant1 at the time of service.
6. The details of the claim were presented as a month-to-month rental agreement that has continued since the original agreement signed with tenant1 in fall of 2017.
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.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
10. Also relevant and considered in this case is sections 10 and 21 of the *Residential Tenancies Act, 2018* (the *Act*), policy 07-006 Premises Uninhabitable, Notice of Termination, the Occupancy and Maintenance Regulations under the *Urban and Rural Planning Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

11. Tenant1 and tenant2 reside in the main floor unit of a two story bungalow owned by the landlords. They access their unit from the front door. There is a separate rental unit in the downstairs of the rental premises. Each unit has a single bathroom.
12. Tenant1 and tenant2 were not present or represented at the hearing and I was unable to reach them by telephone. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
13. 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.
14. As Tenant1 and tenant2 were properly served, and any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.

Issue 1: Vacant Possession

Relevant Submissions

15. A written lease was provided for the rental premises located at [REDACTED] (L#2). It is noted that a different second tenant is included as a named party on the lease. Landlord1 testified that this person vacated the rental unit shortly after the lease was signed, and that tenant2 took up occupancy with tenant1 soon after.

16. Monthly rent is \$1000.00 and due at the first of each month. A security deposit in the amount of \$500.00 was collected with signing of the lease.
17. Tenant1 and tenant2 have resided in the main floor unit of the rental unit since fall of 2017 and a separate tenant has resided in the downstairs unit of the rental premises since May of 2019.
18. Landlord1 issued a termination notice (L#9) on 31 March 2022, with an effective move out date of 31 March 2022. The reason for this notice was *Premises Uninhabitable*, under section 21 of the *Act*, allowing for immediate eviction.
19. Landlord1 submitted into evidence a letter, written by landlord2 to tenant1 and tenant2, dated 30 May 2019 (L#3). This letter is a copy and paste of texts sent to, but not received by tenant1 and tenant2. The texts request quiet from their unit after 11pm in response to complaints received.
20. Landlord1 also submitted into evidence a second letter written by landlord2 to tenant1 and tenant2 dated 12 October 2021 (L#4). This letter refers to an official complaint received from the [REDACTED] regarding the yard of the rental premises. The written lease provided by the landlord indicates that grass cutting is a responsibility of tenant1 and tenant2.
21. Also in this letter to tenant1 and tenant2, landlord2 writes that “the interior of the house was beyond unacceptable”. He concludes the letter with an offer of “if you need any help with any of the above tasks please let me know...” Landlord2 later testified that he has had to attend to the rental property on multiple occasions after receiving complaints from the city regarding the state of the property and that he has had to pick up “heaps of garbage” and mow the lawn, despite lawn mowing being the responsibility of the tenants.
22. When asked why they are seeking vacant possession of the upstairs unit of the rental premises, landlord1 stated that there have been a number of floods and damage done to the downstairs rental unit and that tenant1 and tenant2 were instructed, “if the flooding continues, they will have to leave because there will be too much repairs to do to their home”. She testified that there was then the significant leak on 27 March 2022 and that the plumber refused to do work because the floors in the main floor bathroom were so bad. Landlord1 further testified that she saw for herself, how the floor of the main floor bathroom was mushy and covered in feces and also covered in soggy blankets.
23. Landlord1 submitted a detailed written chronology, provided by the downstairs tenant, of the impact of the flooding and leaks on her downstairs unit at the rental premises (L#5). Landlord1 further testified that tenant1 and tenant2 are not trying to stop the leaks from occurring or damaging the property and Landlord2 testified that it is an “ongoing saga” with tenant1 and tenant2, that there have been problems “since day one when they first moved in” and that several times the landlords have had to:

- Fix the downstairs ceiling and wall;
 - Fix the main floor plumbing by replacing kitchen taps; and
 - Fix the main floor plumbing by unclogging the toilet on multiple occasions.
24. Landlord1 submitted into evidence a written document prepared by their plumber who has visited the rental premises and accessed the upstairs rental unit on multiple occasions (L#6).
25. [REDACTED] was called as a witness.
26. [REDACTED], the plumber, testified that his company services 8,100 apartments across the city and that the main floor apartment of the rental premises, occupied by tenant1 and tenant2, is the “worst apartment he was ever in”. He has since refused to return for hygiene and personal safety reasons.
27. [REDACTED] testified that he is a 4th year student working under two journeymen plumbers. He stated that he visited the main floor unit of the rental premises multiple times between 27 March 2022 and 29 March 2022 to first attend to the water damage in the downstairs apartment and to also replace a toilet in the main floor apartment. He testified that he had to knock repeatedly before he could gain access on 29 March 2022. Once he got access to the main floor unit, he testified that tenant2 stated her toilet was not working and that it was “full to the rim with feces and that there was feces all over the floor”. He further testified that there were 5 or 6 blankets on the floor in the bathroom completely saturated and that “it was a mess”.
28. [REDACTED] testified that he had attended the main floor to replace the toilet but that he did not do so because of the state of the washroom. He also wrote in the letter provided (L#6) that he did not replace the toilet because he found the washroom to covered in feces, water and wet towels. He refused to provide any additional services due to the “unfit and unsanitary conditions” of that bathroom.
29. [REDACTED] testified that he has previously visited the rental premises to service the main floor kitchen to replace taps and that he received a call from tenant2 the following day stating that the “taps were broke” and that they appeared to be ripped right off the counter top. [REDACTED] testified that he “hates when landlord2 calls him because it is hit or miss” to be able to even access the rental unit. (e.g., replacing taps etc.). [REDACTED] also testified that there is mold in the kitchen area from “leaking over time”.
30. [REDACTED] testified that bathroom was up to code (for plumbing components) when it was built and that it appears to be up to code currently. He further testified that the toilet was working when he first visited the rental unit, but that when he returned to replace the toilet (after having to respond to the 27 March 2022 water damage in the downstairs unit), it was full of feces with feces all over the floor as mentioned previously. As such, he did not replace the toilet.
31. [REDACTED] then left the call.

32. Landlord1 testified that she had not yet contacted Belfor, as recommended by the plumber, because the insurance agent must first access the unit and tenant1 and tenant2 have refused access to the insurance agent. Landlord2 reiterated how tenant1 and tenant2 “just won’t let (people) in and Landlord1 further clarified that the insurance agents cannot assess damages until tenant1 and tenant2 have vacated the rental unit.
33. The downstairs tenant, [REDACTED], was called as a witness. She stated that she has lived in the rental premises since May 2019. She referred to her written submission (L#5) throughout her testimony, where she writes “...the people living in the apartment above me have been a nightmare...” [REDACTED] testified that leaks began appearing in her unit in February 2021 and that a section of her ceiling had to be replaced in June 2021.
34. [REDACTED] testified that she could see the tenant’s toilet pipe through her ceiling when it was being repaired in summer 2021. She also spoke of leaking water along her window in fall 2021. This leaking said to stop soon after she reported it to the landlords.
35. [REDACTED] testified that she played middleman between tenant1 and tenant2 and any contractors, such as the plumber attempting to access the main floor unit. [REDACTED] said she does this because she can tell when tenant1 and tenant2 are home. [REDACTED] stated that she does her best, and tries to get along with tenant1 and tenant2 but that it is hard “because there is no working with them...they are just really hard to get along with”.
36. [REDACTED] stated, that the tenants allegedly said to her, “if the main floor bathroom is not fixed, that their toilet and down will soon be in the downstairs unit” (e.g., fall through the ceiling). She further testified that two days later, the leak started again in her ceiling.
37. [REDACTED] spoke at length about the events of 27 March 2022, when she returned home after a weekend away to find her living room under an inch of sewage smelling water and her couch ruined. [REDACTED] testified that the couch has since dried out and is in her living room, but that she cannot use it due to the smell.
38. [REDACTED] stated that she continued to reside in the downstairs apartment despite ongoing floods and other water damage because she is divorced and court ordered to remain in the same school zone as her child’s father. She reiterated that living there is a nightmare, but that she makes the best of it as she has her child 50% of the time. [REDACTED] testified that the landlord and her husband are “wonderful” and very responsive to her concerns.
39. [REDACTED] testified that there was no leak today in her rental unit, but that there had been a leak on Friday (6 May 2022). She reiterated how the leaks happen and then things dry up.

40. ██████ testified how she can hear the faucets in the upstairs unit constantly running and that this is a daily occurrence, that they will turn the faucets on at 2am and leave them running until 4am. She hears the water constantly and that it sounds like they are “filling something up”. ██████ also testified that she can “hear them (tenant1 and tenant2) plunge the toilet for hours” and that they “plunge the toilet all night long”. ██████ testified that this is a daily occurrence.
41. Regarding unit layouts and how they compare between floors, landlord2 testified that the main floor bathroom is above the downstairs bathroom, adjacent to the downstairs living room and that the main floor kitchen is above the downstairs living room. ██████ living room ceiling and wall are where the leaks have occurred and the damage persists. Landlord2 reiterated how “any of the main floor plumbing is adjacent or above (the witness’s) living room”.
42. Landlord2 testified that the summer 2021 repairs were completed by tenant1 and the plumber and that they had to redo some of the ceiling and some of the walls in the downstairs rental unit. He testified that “it’s hard to nail down” what exactly caused the leaks and ceiling damage because “they (tenant1 and tenant2) do it and won’t let us in until several days later”. He stated that there was “issues with the kitchen sink but they could not figure out what the issues were so they replaced everything and then they had issues again”. He further testified that there have been issues with the main floor bathroom and that they plumber has been in there “snaking the toilet many times and have it had it working perfectly when they leave”. He also testified that he has given instruction to replace the main floor toilet but that tenant1 and tenant2 “will not let them in” and now the plumber will “not go in because it is not fit for humans to go in”.
43. Landlord2 testified that when the main floor bathroom leaks, it could “probably hit the ceiling and travel” because “leaks go in every which direction”. This was in response to questions of why, if there are issues in the main floor bathroom, are there no documented issues in the ceiling of the downstairs bathroom. He further clarified that the branch drain from the main floor bathroom runs through the ceiling and wall of the downstairs unit (where the downstairs tenant continues to document repeated water damage). Landlord2 testified that this damage is not caused by a “weather issue or a pipe issue because it happens and it goes away. If it were a pipe issue, it would be constant, it would never stop. But it stops when we fix it”.
44. The landlords testified that they are not willing to offer alternative accommodation to tenant1 and tenant2 for the duration of any construction to the main floor bathroom because “why fix it and then let them back in because they’ll flood it again!” In addition to the bathroom specific issues, both landlords testified to their concerns with the various jars and buckets of water that they observed throughout the main floor unit of the rental premises. However, no pictures of said jars and or buckets was provided.
45. Landlord2 testified that they have owned the rental premises since it was built (1994) and that the house has not required any significant amendments or

alternations to its plumbing since that time. An engineer by trade, landlord2 further testified, that they have snaked tenant1 and tenant2's toilet drain on multiple occasions and that this has always stopped the leaks and water issues reported by the downstairs tenant. He testified that this resolution by snaking is evidence of how the plumbing is caused by the users (tenant1 and tenant2) and is not structural. Landlord2 further testified, that if the plumbing issue was structural, he would expect to see constant leaking and constant floods. Constant leaking and floods do not occur.

46. In order to assist with interpretation of the photos, taken from the downstairs unit, with fluids coming through the ceiling in to the downstairs unit, I gave leave to the landlord to submit a summary document related to pictures (L#7).
47. The first picture provided was dated 23 February 2021 showing water streaming down a wall with a significant, said to be water related bulge behind the wall. Additional pictures were provided in March and May 2021 showing significant water impact in the downstairs rental unit and a collapsing section of the ceiling. The landlord testified that a section of the ceiling was removed and patched in summer 2021.
48. A second set of pictures from that same ceiling was also provided. The first photo was dated 8 February 2022, showing water soaking through the ceiling. Additional photos are provided from 18 March 2022 showing water streaming down the wall from the ceiling. A worsening photo of that same ceiling section was provided on 27 March 2022 along with video footage of water across the buckled flooring of the basement unit. Additional photos are provided from 28 March 2022 showing a sagging rectangular outline in the ceiling, with portions of that same ceiling falling to the floor of the downstairs tenant's unit.
49. No photos were provided of the main floor unit occupied by tenant1 and tenant2. The landlords testified that it is difficult to gain access to the unit and that it is impossible to take pictures because of the behaviour of tenant1 and tenant2 when their unit is accessed. They expressed their concern for the main floor bathroom potentially falling down into the downstairs unit if the main floor bathroom is not fixed soon.

Analysis

50. The landlords are seeking vacant possession of the main floor unit of their rental premises after issuing a termination notice to the main floor tenants under section 21 of the *Act*, *Premises Uninhabitable* which reads in part:

21.

(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.

51. Pursuant to **Policy 07-006 Premises Uninhabitable**, if a person believes the residential unit is not in compliance with the Occupancy and Maintenance Regulations under the *Urban and Rural Planning Act*, they are required to contact the enforcement authority which is the municipality. Such documentation is important for the landlords to establish on the balance of probabilities, that actions of tenant1 and tenant2 were the cause of documented reasons for why the rental premises is to be considered no longer “fit for habitation”. However, the landlords did not provide evidence of having contacted the [REDACTED] Enforcement
52. This lack of documentation made it difficult to review the evidence and testimony provided because the landlords did not maintain comprehensive date specific records of reported issues and or remediation efforts at either unit of the rental premises. The provided dates of pictures received from the downstairs tenant of her unit, but no pictures or other records relating to the main floor unit of the rental premises for which they were seeking vacant possession.
53. Where **Policy 07-006 Premises Uninhabitable** allows for a termination notice to be issued in cases where the parties responsible do not appear to be taking steps to remedy the situation, I found the evidence and testimony put forward by the landlords and witness to be incomplete and potentially contradictory regarding the alleged actions of tenant1 and tenant2. Testimony was received during the hearing was that the significance of leaks and flooding in the downstairs unit comes and goes depending on the alleged behaviour of tenant1 and tenant2. Specifically, issues are said to be temporarily resolved once they are brought to the attention of the landlords for resolution, but the issues come back. Things that come and go are not typically considered emergent.
54. What appears to be emergent however, is the cumulative impact of multiple years of documented leaks and floods from the main floor unit resulting in significant and repeated damage to the downstairs unit of the rental premises. It was because of this repeated damage that culminated in the significant flooding

event of 27 March 2022, leaving sewage smelling water across the downstairs units, that the landlords issued the 31 March 2022 termination notice to the tenants under section 21 of the *Act*, *Premises Uninhabitable*. A rental premises can be considered uninhabitable as a result of flooding or sewage system backups according to policy 07-005 Premises Uninhabitable.

55. Furthermore, a rental unit without an a bathroom, as would occur in the main floor of the rental unit when full repairs are completed, is contrary to section 23 of the Occupancy and Maintenance Regulations under the *Urban and Rural Planning Act* which requires that:

Washroom facilities

23. (1) *Every dwelling unit shall be provided with at least one kitchen sink, washbasin, water closet and bathtub or shower which*

- (a) is in good working order;*
- (b) is connected to a piped water supply; and*
- (c) has an acceptable means of sewage disposal.*

(2) Every dwelling unit shall have provisions for a constant supply of both hot and cold water.

(3) Hot water tanks shall be insulated and equipped with automatic temperature control.

(4) All plumbing fixtures shall operate properly and shall be free from leaks.

56. The landlords testified that they require tenant1 and tenant2 to be removed from the main floor unit of the rental premises so that they can conduct necessary repairs (e.g., replace the bathroom floor and repair all water damage below) and ensure that future issues do not occur.
57. I therefore find that the termination notice issued to the tenants on 31 March 2022 termination notice issued under section 21 of the *Act* to be a valid notice as it meets all the requirements therein.

Decision

58. The landlords' claim for an order for vacant possession of the rented premises succeeds.
59. 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.

Summary of Decision

60. 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.

27 May 2022

Date



Jaclyn Casler
Residential Tenancies Tribunal