

Residential Tenancies Tribunal

Applications: 2022 No. 0335 NL

Decision 22-0335-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:06AM on 30 June 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 the landlord (L#1) confirming that the tenant was served personally and by email, of the claim against her. The landlords testified that they served the email used for regular communications.
6. The details of the claim were presented as fixed term agreement, running 1 January 2022 through to the end of the year. Monthly rent was set at \$900.00 and a security deposit was collected in the amount of \$500.00. A copy of the written rental agreement was provided (L#2).
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. The standard of proof, in these proceedings, 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 landlord is seeking the following:
 - An order for vacant possession.

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* (the *Act*).
10. Also relevant and considered in this case is section 21 of the *Act* and *Residential Tenancies Policy 07-006 Premises Uninhabitable*.

Preliminary Matters

11. The rental premises is a basement apartment in a single family dwelling, occupied by landlord1 and landlord 2.
12. The termination notice was issued on 27 April 2022 after the landlord was notified that the power to the basement apartment had been disconnected for the second time in the period of less than a week. Power was reconnected on 28 April 2022 and has remained connected throughout.

Issue 1: Vacant Possession

Landlord's Position

13. The landlord issued a termination notice to the tenant on 27 April 2022 under section 21 of the *Act* (L#3). This notice was hand delivered to the tenant on the day it was issued and posted on the door. The stated move out date was identified as 27 April 2022.
14. Landlord1 submitted evidence of the following emails received from Newfoundland Power (L#4):
 - 11am on 21 April 2022 notifying her that power for her tenant was disconnected.
 - 3:45PM on 21 April 2022 notifying her the power for her tenant was reconnected.
 - 10:45am on 27 April 2022 notifying her the power for her tenant was disconnected again.
15. Landlord1 testified that she contacted the Landlord Tenant Office for guidance and was informed that disconnection of power is reason for issuing a notice of termination under section 21 of the *Act* which she did at 11:02am on 27 April 2022, identifying a stated move out date of the same day.

16. Landlord1 submitted proof of email received from NL Power notifying her that power was reconnected for her tenant at 11:15am on 28 April 2022 (L#5).
17. Landlord1 testified that she and landlord2 agreed to establish a separate rental agreement with the tenant's boyfriend after they were informed that the tenant's boyfriend needed a place to stay for May and June 2022. This meant that the landlords explicitly permitted the tenant to have an extra occupant in the rental premises for May and June 2022 after issuing her an eviction notice on 27 April 2022 for premises uninhabitable.
18. Landlord1 concluded her testimony by stating that she issued the tenant a section 19 termination notice (not provided) in April 2022 for non-payment of rent and that she had concerns about the tenant smoking in the rental premises despite the unit being a non-smoking unit.

Tenant's Position

19. The tenant testified that her power got disconnected because NL Power initially established an account in her name only, and then later merged it with an account she had previously with an abusive ex-partner. This former account was said to have had significant arrears. The tenant also testified that she attempted to pay off these arrears after power was initially disconnected on 21 April 2022.
20. However, she testified that her ex partner still had access to her bank account and this resulted in her initial attempt to clear arrears on her account failing.
21. The tenant testified that she reported her ex-partner to the police and charges are pending. She also testified, that she only became aware later in the day on 27 April 2022 that her power was disconnected a second time as she was working. Once she became aware, she testified that she worked diligently to resolve the situation and got the NL Power truck to attend to her rental premises first thing on 28 April 2022. She testified that she paid them cash and her power was re-connected.
22. The tenant testified that she is now on top of her bills and that she works constantly, all days of the week. The tenant testified that she was surprised that landlord1 and landlord2 were pursuing the eviction as she had been under the impression that the notice was voided since she got power reconnected within 24 hours. The tenant also emphasized how the landlords had signed a rental agreement with her boyfriend, permitting him to reside with her in the rental premises for May and June 2022.

Analysis

23. The landlords are seeking vacant possession of the basement unit in their home after issuing a termination notice to the tenant 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.

24. Pursuant to *Policy 07-006 Premises Uninhabitable*:

If the actions of the tenant causes the premises to become uninhabitable (ie. due to non-payment of utilities, the electrical power to the premises is disconnected), the landlord may issue a termination notice that the rental agreement is terminated and the tenant is required to vacate the rental premises immediately.”

25. The landlords and tenant agreed that power was disconnected twice in a week and that a termination notice was issued on 27 April 2022. Both parties also acknowledged that power was reconnected on 28 April 2022 and that the landlords permitted the tenant to reside with her boyfriend in the rental unit from May 2022 onwards.

26. Where I accept that the actions of a former partner of the tenant caused the power to be disconnected and I also accept that the tenant has worked diligently to have power reconnected. Specific to the actions of the landlords in declaring their rental unit “uninhabitable”, I found it inappropriate that they then explicitly permitted the tenant’s boyfriend to reside in the same rental unit. In fact, their doing so appeared to be a declaration of habitability of the rental unit.

27. As such, I find the termination notice issued to the tenant on 27 April 2022 to be invalid and therefore unenforceable for the following reasons:

- The tenant testified that she had the power reconnected as soon as she was able;
- I was not convinced that the reasons for the power being disconnected were the result of only the tenant’s specific actions or inactions;
- The tenant testified that she is now organized and committed to paying all bills on time; and

- The landlords wrote a new agreement for the tenant's boyfriend to reside in the rental unit they had recently declared uninhabitable.

28. As such, even though the notice was properly served, because it was not issued for a valid continuing reason, it is not a valid notice.

Decision

29. That the termination notice issued to the tenant, [REDACTED] on 27 April 2022 was not a valid notice; and

30. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

Issue 2: Hearing Expenses

Relevant submissions

31. The landlord claimed \$20.00 for the expense of applying for the hearing (L#6).

32. The tenant is not required to pay this hearing expense as the landlords' claim did not succeed.

Summary Decision

33. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

06 July 2022

Date

[REDACTED]
Jaclyn Casler
Residential Tenancies Tribunal