

Residential Tenancies Tribunal

Application: 2022 No. 420NL

Decision 22-0420-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:08 AM on 22 June 2022 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the tenant", also participated.

Issues before the Tribunal

3. The landlords is seeking the following:
 - An order for vacant possession of the rented premises,
 - An order for a payment of rent in the amount of \$700.00, and
 - An order for a payment of "other" expenses totalling \$253.00

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, 22 and 24 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

6. Landlord2 amended the application at the hearing and stated that the amount of rent that is owing is \$89.50.

Issue 1: Rent - \$89.50

Relevant Submissions

The Landlords' Position

7. Landlord2 stated that she had entered into a verbal rental agreement with the tenant on 01 April 2021. The agreed rent is set at \$700.00 per month and landlord1 stated that the tenant had paid a security deposit of \$350.00.
8. Landlord2 stated that for the month of June 2022, she had only received a cheque for rent for that month totalling \$610.50. She is seeking an order for a payment of the remaining \$89.50.

The Tenant's Position

9. The tenant did not contest the landlords' claim and she acknowledged that she owes \$89.50.

Analysis

10. As there was no dispute concerning this matter, the landlords' claim succeeds.

Decision

11. The landlord's claim for a payment of rent succeeds in the amount of \$89.50.

Issue 2: "Other" Expenses - \$253.00

Relevant Submissions

The Landlord's Position

12. Landlord1 stated that the City of. [REDACTED] had conducted an inspection of the rental unit in May 2022 and it was determined that the wires to the smoke detector had been cut. Landlord1 figured that these wires were cut by the tenant's boyfriend.
13. The landlords hired a contractor to install a new smoke detector, and with their application they submitted an invoice showing that they were charged \$253.00. They are seeking an order for a payment of that amount.

The Tenant's Position

14. The tenant denied that she had cut the wires to the smoke detector. She claimed that whenever she used the toaster, the smoke detector would activate, but she

claimed that she would then only remove the batteries and then later reinstall them.

Analysis

15. Where an applicant makes a claim for compensation for damages, they have the burden of proving, on the balance of probabilities, that the respondent caused the damage and that it was done willfully or as a result of their negligence.
16. Although I don't doubt that the wires to the smoke detector had been cut, I find that the landlords have not presented enough evidence at the hearing to establish that they were cut by this tenant during her tenancy. The tenant denied that she had cut these wires and no evidence was submitted at the hearing showing the condition of that smoke detector when the tenancy began. Without such evidence, I have to conclude that the landlords had not discharged their burden of proving that this damage was caused by the tenant.

Decision

17. The landlord's claim for "other" expenses does not succeed.

Issue 3: Vacant Possession of Rented Premises

Relevant Submissions

The Landlords' Position

18. With their application, the landlords submitted a copy of a termination notice that landlord1 stated was taped to the tenant's door on 07 April 2022. That notice was issued under 3 different sections of the *Residential Tenancies Act, 2018*, and it had an effective termination date of 16 April 2022.
19. The first reason identified in the notice was section 22 of the *Act*—notice where tenant's obligations not met. Landlord1 stated that the issue here was that in one of the bedrooms at the unit, the tenant had her possessions piled up to the ceiling and you could not even see the walls. He argued that this was a fire hazard. He also complained that the tenant had a mattress in the hallway and it was blocking the staircase. Landlord2 also complained that the stove was also covered with so many items that you could not see the burners. She also stated that the lights in the living room were hanging by their wires. No photographs were submitted with the landlord's application showing any of these rooms.
20. The termination notice also identifies section 21 of the *Act*—notice where premises uninhabitable—and the landlord1 stated that the issue here concerned the mattress which was blocking the staircase, which he deemed to be a hazard.

21. The third reason the landlords had issued the termination notice to the tenant was because the landlords claimed that she had been interfering with the peaceful enjoyment of the other residents living at the complex (section 24 of the Act). Landlord1 stated that he had rented the apartment to the tenant and she was supposed to be the only person living there, and she was not to keep pets. However, after she moved in, she allowed her boyfriend and her boyfriend's dog to move in with her as well.
22. Landlord1 stated that he had been receiving numerous calls from the other residents at the complex about loud noises coming from the tenant's apartment all through the night and he also stated that the tenant's dog is constantly barking. In support of that claim, the landlords submitted affidavits from these residents, [REDACTED] and [REDACTED], in which they write that the tenant and her boyfriend are up all night, that their dog is barking, and that the noise is disturbing their sleep.
23. Landlord1 also stated that he has visited the complex and he witnessed the loud barking coming from the dog. He also testified that the tenant's boyfriend had threatened him and he is now fearful about going to the complex.
24. The tenant has not moved out of the property as per the termination notice, and they are seeking an order for vacant possession.

The Tenant's Position

25. Regarding the landlord's reasons for citing sections 22 and 21 in the termination notice, the tenant stated that the reason that she had so many items in that spare bedroom was because she was in the process of moving. Regarding the mattress, the tenant stated that she is storing it in the hallway because she had purchased a new one. She denied, though, that it was blocking the staircase or that it was a hazard.
26. Regarding the issue of peaceful enjoyment, the tenant denied that her boyfriend was living with her, though she did acknowledge that she would have people staying over at the unit from time to time. She also denied that the dog is being kept as a pet at the premises, but did acknowledge that she does take care of it on occasions. With respect to the noise complaints, the tenant stated that there was one occasion where the other residents had complained about noise, but she argued that it was an isolated incident.

Analysis

27. Statutory conditions 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.

and section 22 of this Act 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.

I pointed out to the landlords at the hearing that as they had not given the tenant a prior notice to comply with statutory condition 2, as required by section 22.(1), they were not in a position to issue the tenant a termination notice under this section on 07 April 2022. Therefore the tenancy is not terminated on those grounds.

28. Section 21 of the Act states:

Notice where premises uninhabitable

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.*

29. The issue here concerns the mattress, which landlord1 stated was blocking the staircase, rendering the unit unfit for habitation. But the tenant stated that it was not blocking that staircase and the landlords presented no photographic evidence at the hearing to corroborate their claim that the staircase was obstructed. Without that supporting evidence, I also conclude that they have not established that they were in a position to terminate this tenancy under this section of the Act.
30. This brings me to the last reason which was cited by the landlords—interference with peaceful enjoyment. Statutory condition 7.(a) states:

Statutory conditions

...

7. Peaceful Enjoyment and Reasonable Privacy -

- (a) The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.*

and according to section 24:

Notice where tenant contravenes peaceful enjoyment and reasonable privacy

24. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 7(a) set out in subsection 10(1), 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.

(2) *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.*

31. I accept landlord1's claim that he had been threatened by the tenant's boyfriend and I also accept his claim that he has been able to hear a dog barking at the rental unit on the times he has visited the complex. I also accept landlord1's claim that he had been receiving numerous complaints from the other residents at the complex, and according to the submitted affidavits, these residents are unable to sleep because of the constant noise coming from the tenant's unit.
32. Based on that corroborated evidence, I do find that the landlords were in a position to terminate the rental agreement under section 24 of the Act. As the notice meets all the requirements set out here, it is a valid notice.

Decision

33. The landlord's claim for an order for vacant possession of the rented premises succeeds
34. 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

35. The landlords are entitled to the following:
 - A payment of rent in the amount of \$89.50,
 - An order for vacant possession of the rented premises,
 - The tenant shall also 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.

29 June 2022

Date

John R. Cook
Residential Tenancies Tribunal