

Residential Tenancies Tribunal

Application: 2022 No. 444NL

Decision 22-0444-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:10 AM on 13 July 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the tenant", was also in attendance.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for vacant possession of the rented premises,
 - An order for a payment of \$911.64 in compensation for damages, and
 - An order for a payment of other expenses in the amount of \$12.85

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, 22, 24, and 35 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Issue 1: Compensation for Damages

Relevant Submissions

The Landlord's Position

6. The landlord stated that he had entered into a monthly rental agreement with the tenant on 01 April 2021 and a copy of that agreement was submitted with the landlord's application. The agreed rent is set at \$750.00 per month and the landlord stated that the tenant had paid a security deposit of \$375.00.
7. The landlord stated that he was required to replace one of the windows at the rental unit because the glass had been smashed out. With his application, the landlord submitted a photograph showing that damaged window as well as an invoice showing that he was charged \$911.64 to have it replaced.
8. The landlord stated that someone broke the window and the police were called. He did not know who broke the window or whether the tenant was responsible.

The Tenant's Position

9. The tenant stated that a woman had come to her door looking for "████████", a person who lived at the unit before she had started renting it. She testified that that woman picked up a rock and threw it through the window after she was told that ██████ no longer lived there.

Analysis

10. Under Section 10.(1)2. of the *Residential Tenancies Act, 2018* the tenant is responsible to keep the premises clean and to repair any damage caused by a willful or negligent act.
 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.

Accordingly, in any damage claim, the applicant is required to show:

- That the damage exists;
- That the respondent is responsible for the damage, through a willful or negligent act;
- The value to repair or replace the damaged item(s)

In accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential tenancies policy 9-6.

Under Section 47 of the Act, the director has the authority to require the tenant to compensate the landlord for loss suffered or expense incurred as a result of a contravention or breach of the Act or the rental agreement.

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;
 - (b) directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;
 - (c) requiring a landlord or tenant who has contravened an obligation of a rental agreement to comply with or perform the obligation;
 - (d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the rental agreement

11. No evidence was presented by the landlord to establish that the tenant had broken the window through any deliberate or negligent act. It was the tenant's testimony, which I accept, that a person that she did not know, and was not a guest of hers, threw a rock through that window.
12. As the tenant did not cause the damage to the window, she is not responsible for the costs of repairing or replacing it.

Decision

13. The landlord's claim for the costs of replacing the damaged window does not succeed.

Issue 2: Vacant Possessions of Rented Premises

Relevant Submissions

The Landlord's Position

14. On 21 April 2022, the landlord sent a termination notice to the tenant, by registered mail, and a copy of that notice was submitted with his application. That notice was issued under 2 different sections of the *Residential Tenancies Act, 2018*: section 22 (notice where tenant's obligations not met) and 24 (notice where tenant contravenes peaceful enjoyment and reasonable privacy). That notice had an effective termination date of 30 April 2022.
15. With respect to the tenant's obligations, the landlord stated that the notice was issued to the tenant under this section of the *Act* because she had not repaired the window after it had been smashed. The landlord stated that he had not issued the tenant with any prior written notice to have the window repaired.

16. Regarding the issue of peaceful enjoyment, the landlord stated that the police had visited him inquiring about the tenant's boyfriend, [REDACTED]. According to the landlord, [REDACTED] had been advertising the tenant's unit for rent, and he had managed to dupe 2 people out of several hundreds of dollars.
17. The landlord stated that the tenant has not vacated, as required, and he is seeking an order for vacant possession of the rented premises.

The Tenant's Position

18. The tenant stated that she never did receive this termination notice, and she knew nothing about it until 02 July 2022 when she was served with the landlord's application. She also pointed out that on the submitted notice, the landlord incorrectly wrote that her name is "[REDACTED]".
19. Regarding her boyfriend, the tenant stated that she believes that he has been charged with fraud, but she pointed out that that matter is currently before the courts and there has been no finding on his guilt or innocence.

Analysis

20. Both section 22 and section 24 of the *Residential Tenancies Act, 2018* allow a landlord to terminate a rental agreement, not less than 5 days after the termination notice has been served, where a tenant does not comply with a request to carry out repairs or where a tenant interferes with the landlord's peaceful enjoyment or with his rights.
21. The tenant stated that she did not receive this termination notice and the tracking history associated with that registered letter shows that, although a notice card was left at the tenant's residence indicating where the letter could be collected, it was eventually returned to the landlord.
22. Section 35 of the *Residential Tenancies Act, 2018* deals with the service of documents, including termination notices, and the relevant subsections state:

Service of documents

35. (2) A notice or other document under this Act other than an application under section 42 shall be served by a landlord on a tenant by

...

(e) sending it to the tenant by prepaid registered mail or prepaid express post at an address

(i) provided by the tenant, or

(ii) where the tenant carries on business;

...

(5) For the purpose of this section, where a notice or document is sent by registered mail or express post, it shall be considered to have been served on the fifth day after mailing, and the service may be proved by providing evidence that the notice or document was prepaid and properly addressed and sent.

23. The tracking history shows that the termination notice was sent on 21 April 2022, and, by 35.(5), it is therefore considered to have been served on the tenant on 26 April 2022. But on 26 April 2022, the earliest the landlord could have terminated the rental agreement under these 2 sections of the Act would have been 02 May 2022, 5 clear days after the notice was served. As the landlord's notice states that the termination date is 30 April 2022, it is not valid.
24. I'll also point out that the landlord was not in a position to issue a notice to the tenant under section 22 of the Act, anyhow. As indicated above, the landlord has not presented any evidence to establish that the window was damaged by any deliberate or negligent act on her part, and in any case, a termination notice under section 22 can only be issued after a tenant fails to comply with a written notice demanding that repairs be carried out. The landlord acknowledged that he had not given the tenant a written notice to carry out repairs.
25. For these reasons, the landlord's claim does not succeed.

Decision

26. The termination notice issued to the tenant on 26 April 2022 is not a valid notice.
27. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

13 July 2022

Date



John R. Cook
Residential Tenancies Tribunal