

Residential Tenancies Tribunal

Application 2022-No.532-NL
2022-No.575-NL

Decision 22-0532-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:01 a.m. on 09-August-2022.
2. The applicants, [REDACTED] and [REDACTED], they are represented by [REDACTED]
[REDACTED], hereinafter referred to as "the landlord" she attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant" attended by teleconference

Preliminary Matters

4. The landlord submitted an affidavit (LL#01) stating that she served the tenant with notification of the hearing electronically to the tenant's email, on 28-July-2022. The tenant confirms this service.
5. The tenant submitted an affidavit (TT#01) stating that she served the landlords with notification of the hearing electronically to the landlord's email, on 13-July-2022. The landlord confirms this service.

Issues before the Tribunal

6. The landlord is seeking vacant possession of the rental premises.
7. The tenant is seeking validity of termination notice.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

9. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, and Section 22: Notice where tenant's obligation not meet.

Issue 1: Vacant Possession of the Rental Premises

Landlord's Position

10. The landlord submitted the written rental agreement (LL#02) she has with the tenant. The tenant moved in on 26-June-2020. She renewed the lease on 28-December-2021 and this agreement ended on 28-July-2022. The tenant pays \$1,500.00 rent, her rental period is from the 28th day of each month until the 28th day of the following month. Rent is due on the 26th day of each month. (The landlord said that the payment date of the 26th is in paragraph 12 of the agreement.) The landlord said that the tenant paid a security deposit of \$750.00 before taking possession in June 2020. She said she is still in possession of the deposit.
11. The landlord said that she had served the tenant with two other termination notices (LL#03) and she concedes that they are not valid. She has applied for vacant possession based on the termination notice (LL#04) which is signed and dated for 25-July-2022 with a termination date of 31-July-2022. She said she emailed this notice on 25-July-2022. The notice is on a landlord's notice to terminate early – cause form for failure to keep the premises clean and to repair damage.
12. The landlord submitted the inspection report (LL#05) completed with the tenant when she took occupancy. The landlord said that on page 2 of 6 it shows that in bathroom #1 the only damage noted is a hole in the gyproc by the towel holder.
13. The landlord submitted a picture (LL#07) showing that there is water damage to the cabinet door and that the vinyl is cracked along the edge of the countertop. She said that a contractor said, that the water damage is from allowing water to build up and sit on the surface without wiping it away. She said, he said that someone peeled the edging of the countertop off.
14. The landlord said that prior to the tenant signing the lease in December, she did a walk through and she saw the damage to the bathroom countertop at that time. She indicated that in the rental agreement (LL#02) that paragraph 33 states:

"Additional Clause – Damage to bathroom cabinets will be repaired at tenant's expense as per previous inspection report from June 26, 2021. Cabinet was without damaged (sic) during initial inspection report. Landlord will arrange for repairs which will be billed to tenant."
15. The landlord said that it was too difficult to work around the tenant's schedule to get the work done. She then gave the tenant a "landlord's request for repairs" (LL#06) it is signed and dated for 29-June-2022 with a repair date of 08-July-2022. The landlord said that the repair wasn't completed and she gave the tenant the termination notice from paragraph 11. It was signed and dated for 25-July-2022 with a termination date of 31-

July-2022. She said she sent the notice to the tenant's email on 25-July-2022. She said that the work is not completed and that the tenant is still living there.

16. The landlord is seeking an Order of Possession.

Tenant's Position

17. The tenant agrees with the terms of the rental agreement as stated by the landlord however, she said that rent is due on 29th of each month. She said that when she renewed the lease she pointed this out to the landlord. She said however, that she typically pays rent by the 26th.
18. The tenant agrees that she received the termination notice with a termination date of 31-July-2022 on 25-July-2022 by email.
19. The tenant said that no one peeled the edging off the countertop. She said that the door is difficult to open and that it must have caught the edge of the countertop and broke it. She said she did not report the issue to the landlord. She said she still has the piece that has broken off and had offered to glue it back on, but she said that the landlord wants it replaced.
20. The tenant said that she has had a contractor look at the counter and it would be difficult to match the original and that the landlord hasn't agreed to a change.
21. The tenant disputes that the landlord couldn't work around her schedule for the repairs to be done. She said she would have accommodated the contractor's schedule.
22. The tenant doesn't dispute that the damage occurred while she was living there. She said that the cupboard door sticks and it is possible the weight of the sink is making the counter sag. She said she is willing to pay for the repair and that the landlord could do the work after she moves.
23. The tenant said that the counter is still not repaired.

Analysis

24. Section 10 of the Residential Tenancies Act, 2018, is as follows:

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.*

25. The tenant doesn't dispute, that the damage is her responsibility and she has agreed to pay for the work to be done. The tenant was given "landlord's request for repairs" in accordance with Section 22 of the Residential Tenancies Act, 2018, as follows:

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.***

26. The landlord, in accordance with the *Act*, must first give the tenant notice to complete the repair and after a reasonable period of time, she can then give a termination notice if the tenant doesn't complete the repair.

27. The landlord did give the tenant notice to complete the repairs and followed the requirements outlined in the *Act*. As the tenant has taken responsibility for the damage and has still not completed the repairs; I find that the landlord's termination notice does meet the requirements of the *Act*.

28. The notice does follow the guidelines of the *Act* and was served in accordance with the *Act*. The notice is valid.

Decision

29. The landlord's claim for an Order of vacant possession succeeds.

30. The tenant shall vacate the premises immediately.

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

Issue 2: Validity of termination notice

Tenant's Position

32. The tenant questioned the validity of the termination notice.

Decision

33. As per paragraph 27 it has been determined that the notice is valid.

Summary of Decision

34. The landlord shall be awarded an order for vacant possession.

35. The tenant shall vacate the premises immediately.

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

August 10, 2022

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office