

Residential Tenancies Tribunal

Application 2022 No. 534NL
Application 2022 No. 566NL

Decision 22-0534-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:56 PM on 08 August 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing. The landlord, [REDACTED], hereinafter referred to as "the landlord", was also in attendance.

Issues before the Tribunal

3. The tenant is seeking the following:
 - A determination of the validity of multiple termination notice issued to her by the landlord, and
 - An order for a payment of \$410.00 in compensation for inconvenience.
4. The landlord is seeking the following:
 - An order for vacant possession of the rented premises.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case are sections 10, 14, 18 and 22 of the *Residential Tenancies Act, 2018*.

Issue 1: Vacant Possession of Rented Premises**Issue 2: Validity of Termination Notices****Relevant Submissions**

7. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant on 01 September 2019. The agreed rent is currently set at \$1200.00 and the tenant paid a security deposit of \$1000.00.
8. In June 2022, the landlord visited the rental unit and she discovered several deficiencies at the property that needed to be rectified. On 22 June 2022, she issued the tenant 2 notices to carry out repairs, and the following repairs were to be completed by 26 June 2022:
 - Repair storm door
 - Remove animals
 - Repair fridge door
 - Get rid of smell in basement
 - Remove garbage from electrical room
 - Remove old vehicle from property
 - Clean carpet in basement
 - Remove marks from walls
 - Clean the premises
9. The landlord stated that the tenant has complied with some of these requests, but others have not yet been completed. She stated that the storm door has been reattached, although there is still some minor damage visible, and she stated that the garbage has been removed from the electrical room. The car was removed from the property, but this was not done prior to the deadline of 26 June 2022.
10. However, the landlord claimed that the tenant has not yet removed the pets from the unit. She stated that she was aware that the tenant would have 1 dog when she moved in, but since then the tenant has brought in a second dog and a cat without her permission. The landlord also complained that the tenant had not cleaned the property, and she was unsure if the tenant had cleaned the marks off of the walls. The handle for the refrigerator has not been reattached and the carpets have not been cleaned either.
11. Because the tenant had not completed all of these repairs, the landlord issued her a termination notice on 26 June 2022, and a copy of that notice was submitted with the tenant's application. That notice was issued under section 22 of the *Residential Tenancies Act, 2018* (notice where tenant's obligations not met) and it had an effective termination date of 02 July 2022.
12. 2 other termination notices were issued after 26 June 2022 and copies of those notices were also submitted with the tenant's application. The first, issued on 01 July 2022, was a standard 3-month notice, issued under section 18 of the *Act*,

and the landlord indicates in that notice that the tenant had to move on 01 October 2022. The second notice, issued on 04 July 2022, was also a section 22 notice and according to that notice the tenant had to move out by 10 July 2022.

13. The landlord is seeking an order for vacant possession of the rented premises.

The Tenant's Position

14. The tenant acknowledged receiving the notice to carry out these repairs and she acknowledged that she had received the 3 termination notices.
15. Regarding the repairs, the tenant repeated the landlord's statement that she had indeed repaired the storm door as requested, but she denied that that damage was caused by her. She claimed that the door was blown off the house during a severe wind storm. The tenant acknowledged that she had not repaired the refrigerator door handle, but indicated that she will reattach it in the future. She claimed that that handle came off when her 4-year old son opened the refrigerator one day and she argued that it was not done deliberately, and just came apart on its own.
16. With respect to the animals, the tenant pointed out that she had not signed any written rental agreement which stated that there was a no-pet policy. She also claimed that the landlord had never told her she could not keep pets and she stated that the landlord knew that she had dogs when she moved into the unit.
17. The tenant also stated that she had cleaned the apartment after she had received the landlord's notice and she also claimed that she had cleaned all the marks off the walls that her children had made with washable Crayola markers. With respect to the smell in the basement, the tenant denied that there was any smell and she claimed that her cat is neutered and litter-trained.
18. The tenant did acknowledge, however, that the carpets are dirty and she agreed with the landlord that they do need to be cleaned. She stated that there was no point cleaning them by 26 June 2022, though, as they would just get dirty again, and she testified that she had informed the landlord that she would have these carpets cleaned before she vacates.

Analysis

19. With respect to the second notice issued to the tenant on 01 July 2022, I find that that notice is not valid. The relevant subsections of section 18 of the *Residential Tenancies Act, 2018* state:

Notice of termination of rental agreement

18. (2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises

...

(b) *not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and*

...

(9) *In addition to the requirements under section 34, a notice under this section shall*

- (a) *be signed by the person providing the notice;*
- (b) *be given not later than the first day of a rental period;*
- (c) *state the date, which shall be the last day of a rental period, 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*
- (d) *be served in accordance with section 35.*

According to subsection 18.9(c), the termination date specified in a termination notice under this section of the Act must fall on the last day of a rental period. The landlord stated that the rent was due on the first day of each month, meaning that the last day of the month is the last day of the rental period. As the landlord's notice issued under this section of the Act states the tenant must move on 01 October 2022, the first day of that rental period, it is invalid. It ought to have stated that the tenant had to vacate on 30 September 2022.

20. Regarding the other 2 notices, statutory condition 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 the 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.

21. With respect to the first notice the landlord issued to the tenant under this section of the Act, I also find that that notice is not valid. According to the landlord's request for repairs, the tenant had until 26 June 2022 to have the requested repairs completed—that is, she had until the end of that day to have the repairs completed. If those repairs were not completed by the end of that day, then the landlord could issue a termination notice under this section of the Act. But if the tenant had until the end of 26 June 2022 to have the repairs completed, the earliest the landlord could have issued such a notice would have been 27 June 2022. As that notice was issued on 26 June 2022, it is invalid.
22. The 3rd notice, though meets the timeframe requirements set out here and is not defective for those reasons. The question, then, is whether the tenant had in fact contravened statutory condition 2 and whether she had come into compliance by 26 June 2022, as required by the notice.
23. It was agreed by both parties that the tenant had removed the garbage from the electrical room and that she had removed the car from the property.
24. No evidence was presented by the landlord to convince me that there was a smell in the basement and I therefore find that the landlord has not established that the tenant was in contravention of statutory condition 2 with respect to that matter. The tenant also testified that she had cleaned the apartment after she had received the notice and that she had removed the markings from the walls. The landlord presented no evidence to contradict that testimony and I therefore accept the tenant's testimony on those matters.

25. With respect to both the storm door and the refrigerator door handle, I was not persuaded that the landlord had established that this damage had been caused by any deliberate or negligent act on the part of the tenant or her 4-year old son, and I found the tenant's testimony concerning these incidents to be probable.
26. Regarding the tenant's pets, I also find that the landlord had failed to establish that this meant she was in breach of statutory condition 2. Even if there was a no-pet policy in place for this tenancy, the mere keeping of pets does not violate that condition. This statutory condition states that a tenant must keep a unit clean and repair deliberate damage, but no evidence was presented at the hearing to establish that the tenant's pets had caused any damage to the property or that they had made it unclean. In any case, the landlord acknowledged that there was no no-pet policy in place and no evidence was presented at the hearing, e.g., a written rental agreement, stating that the tenant had to seek the landlord's permission to have additional pets.
27. This leaves the carpets. The tenant acknowledged at the hearing that these carpets were soiled and needed to be cleaned and she also acknowledged that she had not cleaned them by 26 June 2022, as required in the notice. On this issue then, I find that the tenant had violated statutory condition 2 and that she did not come into compliance with the landlord's notice to clean those carpets. As such, on 04 July 2022, the landlord was in a position to issue the tenant a termination notice under this section of the Act.
28. As this 3rd notice meets all the requirements set out here and as it was properly served, it is a valid notice.

Decision

29. The termination notices issued to the tenant on 26 June 2022 and 01 July 2022 are invalid notices.
30. The termination notice issued to the tenant on 04 July 2022 is a valid notice.
31. The landlord's claim for an order for vacant possession of the rented premises succeeds.
32. The tenant shall pay to the landlord 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 3: Compensation for Inconvenience - \$410.00

Relevant Submissions

The Tenant's Position

33. The tenant stated that early in June 2022, the landlord had requested that the tenant remove the vehicle from the property and that she mow the lawn, and the tenant claimed that the landlord had given her until the end of the month to have that work completed. However, the tenant stated that the landlord went back on her word and was going to return to the property earlier in June 2022 to determine if the lawn was mowed. She claimed that she had made arrangements to have the lawn mown for free, but because the landlord was returning earlier than agreed, she had to hire someone to mow the lawn for her. The tenant submitted a receipt with her application showing that she had paid \$60.00 to have that work carried out.
34. The tenant submitted a second receipt with her application showing that she was charged \$250.00 to have the storm door reinstalled. The tenant again stated that that door blew off in a major wind storm, through no fault of her own, and she argued that should not be held liable for the costs of repairing it. She also claimed that the contractor she had hired to re-hang that door had informed her that it had not been properly installed in the first place.
35. The tenant also pointed out that when she first moved into the property in 2019, she paid to the landlord a security deposit of \$1000.00. She pointed out that, according to the *Residential Tenancies Act, 2018*, a landlord is only permitted to collect a security deposit that is no greater than $\frac{3}{4}$ the amount of the monthly rent. Given that the rent is \$1200.00, the tenant stated that the landlord had collected \$100.00 more than she was permitted.

The Landlord's Position

36. The landlord stated that someone in the neighbourhood had called the city of [REDACTED] about the state of the tenant's property and a municipality officer instructed her to have the lawn cleaned up earlier than what she had initially told the tenant. The landlord stated that she had not made that call to the city and she was not to blame for the change in date.
37. With respect to the door, the landlord stated that she used to live at this rental property and she never encountered any issues with that storm door. She argued that the tenant is responsible for the costs of repairing that door as she was negligent in her use of that door.
38. Regarding the security deposit, the landlord claimed that the tenant was sometimes late paying her rent, and she did not charge the tenant any late fees as she was trying to accommodate her as much as she could, given that she was a single mother.

Analysis

39. Regarding the costs the tenant had incurred to have the lawn mowed, I was not persuaded that the landlord is responsible for those costs. The tenant

acknowledged that she was responsible for maintaining and mowing the lawn during this tenancy, and the costs she incurred to have it mowed, in accordance with her agreement with the landlord, fall to her.

40. I do agree with the tenant on the issue of the door, however. The landlord presented no evidence to establish that the tenant had damaged the door through any deliberate or negligent act and I accept the tenant's claim that it blew off in a wind storm. As the landlord is responsible for maintaining the rented premises "in a good state of repair" at all times during the tenancy, and as this damage was not caused by the tenant, the costs of repairing the door are to be borne by the landlord. The tenant's evidence shows that she had paid \$250.00 to have that door repaired and her claim therefore succeeds in that amount.
41. The tenant is also right about the security deposit. Section 14.(1)(b) of the *Residential Tenancies Act, 2018* states that a landlord shall not demand or accept a security deposit that is more than $\frac{3}{4}$ of the amount of rent payable for the first month of the tenancy. As the tenant is not carrying any rental arrear, I order that the landlord return to the tenant \$100.00 of the security that had been paid to her.

Decision

42. The tenant's claim for compensation for inconvenience succeeds in the amount of \$250.00.
43. The landlord shall return to the tenant \$100.00 of the \$1000.00 security deposit she is holding.

Issue 4: Hearing Expenses

44. As both claims have been successful, the parties shall pay their own hearing expenses.

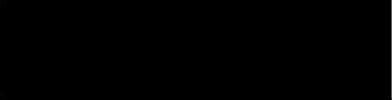
Summary of Decision

45. The termination notices issued to the tenant on 26 June 2022 and 01 July 2022 are invalid notices.
46. The termination notice issued to the tenant on 04 July 2022 is a valid notice.
47. The landlord's claim for an order for vacant possession of the rented premises succeeds.
48. The tenant shall pay to the landlord 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.

49. The tenant's claim for compensation for inconvenience succeeds in the amount of \$250.00.
50. The landlord shall return to the tenant \$100.00 of the \$1000.00 security deposit she is holding.

15 August 2022

Date


John R. Cook
Residential Tenancies Tribunal