

Residential Tenancies Tribunal

Applications: 2022 No. 0698 NL

Decision 22-0698-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 1:55PM on 26 September 2022 via teleconference.
2. The applicant, [REDACTED], also known as [REDACTED] and hereinafter referred to as "the landlord", participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "tenant1", did not participate in the hearing, but the respondent [REDACTED], hereinafter referred to as "tenant2" did participate.
4. An affidavit of service was provided by the landlord (L#1) confirming that tenant1 was served of the claim against her by registered mail, and proof of the mailing envelope (L#2) along with tracking was provided. The landlord testified that he only provided notice to tenant1 because she resides with tenant2. Tenant2 waived his right to service and agreed to participate in the hearing.
5. The details of the claim were presented as a fixed term rental agreement that began 01 April 2021 and was signed by tenant1 (L#3). The landlord testified that tenant2 has resided in the rental premises since the beginning and is a recognized tenant. Monthly rent is set at \$750.00 and a security deposit in the amount of \$375.00 was collected.
6. 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

7. The landlord is seeking the following:
 - An order for vacant possession; and
 - Compensation paid for damages in the amount of \$2,205.82.

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* (the *Act*).
9. Also relevant and considered in this case are sections 10, 22 and 24 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

10. Tenant1 was not present or represented at the hearing and I was unable to reach her by telephone. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
11. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as she has been properly served.
12. As tenant1 was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.
13. Tenant2 testified that tenant1 vacated the rental premises and is living with her mother. He also testified that rent is paid in full by AES on behalf of tenant1 and that he does not have his own rental subsidy.
14. The landlord made a previous application to this tribunal, also for vacant possession of the rental premises and payment of damages (2022-0444-NL), however, these requests were not granted.

Issue 1: Vacant Possession of Rented Premises

Landlord's Position

15. The rental premises is a single family dwelling located at [REDACTED] [REDACTED]. The tenants reside in the basement apartment and the landlord resides in the main floor with his wife and son (10) and daughter (4).
16. The landlord testified that he attempted to provide notice of termination for the fixed term rental agreement once it expired on 31 March 2022, however tenant1 did not accept this notice and the two parties attempted to negotiate a mutually agreeable move out date. Tenant1 allegedly requested an additional three months time prior to vacating, and the landlord testified that he agreed to an absolute final move out date of 01 July 2022.
17. The landlord testified on 01 July 2022 that he and his wife changed the locks on the rental premises after receiving permission from tenant2 to inspect the rental premises. The landlord testified that he changed the locks because he had been attempting to secure a move out date for the tenants since 31 March 2022 and that he provided the keys for the new locks to the tenants later on 01 July 2022 after the tenants called the police.
18. The landlord testified that he observed damage in the rental premises on 01 July 2022 and so he took a number of pictures of damage (L#4) in the rental premises and prepared a Landlord's Request for repairs (L#5) that he then issued to the tenants on 03 July 2022 with the support of the police who attended to the tenants rental premises so that the landlord could serve notice. The landlord testified that he then attended to the rental premises again on 08 July 2022 with the support of the police and documented that none of the repairs had been completed. The landlord testified that he has pictures of the rental premises prior to it being occupied by the tenants but that he did not submit this photos to the tribunal.
19. The landlord testified that he then issued the tenants a termination notice on 20 July 2022 with a stated move out date of 03 August 2022 (L#6). This notice was a standard notice of termination, and it was issued under section 22 (*Failure to keep premises clean and to repair damage*) and section 24 (*Interference with peaceful enjoyment and reasonable privacy*) of the Act. The landlord testified that he issued the notice by Xpresspost on the day it was issued and that he had to issue the notice this way, because the tenants "*cut off communication*" and would not answer the door if he knocked and would not pick up the phone if he called.
20. The landlord testified that he issued the notice under section 22 of the Act because he had issued the tenants with the request for repairs on 03 July 2022, and then documented on 08 July 2022 that the repairs had not been completed which causes him stress because he does his best to maintain the household and his property. He testified further that he issued the notice under section 24 of the Act because the police have attended the rental premises 15 – 20 times because of tenant2 and that because tenant2 does not answer his door, the police often end up at the landlord's door. The landlord also testified that he issued the notice under section 24 because he wanted the tenants to vacate by

May 2022, and it is now late September 2022 and they are still in the rental premises which is the basement apartment to the landlord's family home.

21. The landlord also spoke at length of how multiple individuals, including the police have been knocking on his door regarding a rental scam for the basement apartment, which the landlord believes is associated with tenant2 because the rental ad includes photos of the rental premises that include the same damages that were documented by the landlord on 01 July 2022.

Tenant's Position

22. Tenant2 testified that he was aware of the termination notice that was received in July but testified that this notice was not delivered to him. He also testified that he was aware of the landlord's request for repairs and that he allowed the landlord's wife to access the rental premises on 01 July 2022 but that he was surprised to return home later that day to find that the locks had been changed. Tenant2 testified that he called the cops who then ordered the landlords to provide the tenants with keys to the new locks.
23. Tenant2 acknowledged that the police have attended to the rental premises on multiple occasions but argued that this was not reason for termination because the police were there for a personal matter. He spoke further to say that his grandmother will call the police to conduct wellness checks if he does not communicate with her, and that the police also attended at least three times related to a criminal charge that tenant2 is facing. Tenant2 testified that he has been unemployed since summer 2021 and that he works odd jobs, mostly in construction. He testified further that he tries to be respectful and that he keeps to himself. When asked to comment on the landlord's testimony regarding a possible rental scam, tenant2 testified that he knows nothing about it. He also spoke about how tenant1 recently returned to the rental premises and "stole" tenant2's phone, which caused him to chase her out of the rental premises.

Analysis

24. To issue a termination notice under section 24 of the Act, Interference with Peaceful Enjoyment and Reasonable Privacy, a landlord must be able to establish, on the balance of probabilities, that the tenant unreasonably interfered 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.
25. According to Residential Tenancies Policy 07-005, Interference with Peaceful Enjoyment and Reasonable Privacy, interference is defined as an ongoing unreasonable disturbance or activity, outside of normal everyday living, caused by the landlord or the tenant or someone permitted on the premises by the landlord or the tenant. This includes any unreasonable disturbance that interferes with right of the landlord to maintain and manage the rental property. The policy further identifies that unreasonable disturbances interfering with peaceful

enjoyment and reasonable privacy may include, but is not limited to the following: (i) excessive noise; (ii) aggressive or obnoxious behaviour; or (iii) threats and harassment.

26. The landlord resides in the main floor of the rental premises with his wife and two young children. I accept that both the landlord and tenant2 agreed that the police have attended to the rental premises on multiple occasions and that the police often end up at the landlord's door despite attending only to speak with tenant2 regarding a criminal matter. I further accept that the landlord and tenant2 agree that the landlord has been trying since spring 2022 to have the tenants vacate the rental premises, that the landlord agreed to a later move out date than originally anticipated, and that the landlord is very bothered by the tenants failure to address his request for assorted repairs in the rental premises.
27. Consequently, I find that the landlord established on the balance of probabilities that the tenants have continued to interfere with the activities of the landlord, his wife and his small children who reside in the main floor of the rental premises.
28. Regarding service of the termination notice, the landlord testified that he has to serve by Xprespost because the tenants "cut off communication". A termination notice issued under section 24 of the *Act* must also meet the following requirements:

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.

29. The landlord testified that he issued the termination notice on 20 July 2022 by Xpresspost mail, and according to 35(5) of the *Act*, a document is considered served on the fifth day after mailing. This would mean that the notice issued on the 20th, was officially served on the 25th of July 2022 and because the stated

move out date was 03 August 2022, I find that the notice is a valid notice because it was also properly served.

Decision

30. The landlord is entitled to an order for vacant possession of the rented premises,
31. 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.

Issue 2: Compensation for Damages (\$2,205.82)

Landlord's Position

32. The landlord testified that he is seeking compensation for damages observed in the rental premises and shown in the pictures submitted (L#4). He testified that he does not have exact costs or receipts for repairing the documented damage and that he just estimated the costs because he has been unable to have a contractor officially assess the damage within the rental premises. The landlord testified that the items on the damage ledger (L#7) match the items that had been included on the landlord's request for repairs.
33. The landlord testified that the house was built in 1994, that he has owned it since 2013, and that he completed some renovations in the rental premises prior to the tenants taking occupancy of the rental premises but that these renovations did not include painting. As noted in paragraph 18, the landlord has pictures of the rental premises prior to it being occupied by the tenants, but did not submit them.

Tenant's Position

34. Tenant2 acknowledged some of the damage within the rental premises, such as the holes in the wall, and testified that he had communicate to the landlord's wife and indicated that he was willing to fix some of the damages himself, but that he did not have the money to first buy necessary supplies. Regarding the landlord's claim for compensation for a damaged range hood, tenant2 testified that the appliances within the rental unit are all at least 15 years old.

Analysis

35. The applicant in a damage claim is required to provide and speak to the evidence (witness, documentary, or recorded) necessary to establish on the balance of probabilities that:
 - That the damage for which they are claiming compensation, exists;
 - That the respondent is responsible for the reported damage through a willful or negligent act; and

- The value to repair or replace the damaged item(s).

36. If and when damaged items pass the validity test of damages based on the balance of probabilities, actual compensation amounts are calculated in accordance with *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*. According to this policy, higher compensation is awarded for damage of newer items, less compensation is awarded for items considered to have exceeded their serviceable life.

37. Regarding the landlord's claim for compensation in the amount of \$2,205.82, the landlord did not provide any evidence related to the state of the rental premises prior to move in and he also did not provide any documentary evidence related to the costs for repairing any of the documented damages. As such, the landlord failed to establish on the balance of probabilities that he would incur costs in the amount of \$2,205.82 to repair any documented damages.

Decision

38. The landlord's claim for compensation for damages does not succeed in any amount.

Hearing Expenses

39. The landlord claimed the \$20.00 expense for applying for this hearing. As his request for an order for vacant possession has been successful, the tenants shall pay this hearing expense.

Summary Decision

40. The landlord is entitled to the following:

- Payment of \$20.00 for hearing expenses.
- An order for vacant possession of the rented premises.
- 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.

27 September 2022
Date

Jaclyn Casler
Residential Tenancies Board