

Residential Tenancies Tribunal

Application 2022-0702-NL

Decision 22-0702-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:03 a.m. on 06-September-2022.
2. The applicant, [REDACTED] and [REDACTED], represented by [REDACTED], hereinafter referred to as "the landlord" 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 he served the tenant with notification of today's hearing electronically, to the tenant's email. The tenant confirms that he received notification as stated.

Issues before the Tribunal

5. The landlord is seeking
 - Vacant possession of rental premises
 - Hearing expenses \$20.00

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 20: Notice where material term of agreement contravened.

Issue 1: Vacant Possession of the Rental Premises

Landlord's Position

8. The landlord submitted the rental agreement (LL#02), he said that the tenant moved into the apartment 23-December-2021 his rental agreement began on 02-January-2022. The tenant's rental period is from the 2nd day of each month until the 1st day of the following month. The tenant's rent of \$750.00 is due on the 2nd day of each month. The tenant paid \$562.50 security deposit on 23-December-2021 and the landlord is still in possession of that deposit.
9. The landlord said that a family member of the tenant had rented this apartment and after they passed away the tenant took occupancy. The landlord stated that the rental agreement (LL#02) states under the section "Obligation of the tenant" that there is no smoking and no pets. This agreement is signed by the tenant.
10. The landlord said that the upstairs unit was vacant starting in November. On the 16-January-2022 he said he had an appointment with a potential renter to view the upstairs apartment. He said the tenant was the only person living in the house at that time. When he did the viewing with the potential renter, there was a very strong smell of marijuana smoke. He said that the individual didn't rent because of the smell.
11. After the viewing the landlord said he went downstairs to the tenant's apartment and told him that he isn't to smoke inside the apartment, if he does this again he will be evicted. He said that the tenant apologized and agreed not to do this again. The landlord submitted an email (LL#04) that he had sent to the tenant on the 17-January-2022 as written notice that smoking will not be tolerated.
12. The landlord said that in July there was an issue with the plumbing and his partner went over to the apartment. The landlord said that when he returned he said that there was a strong smell of marijuana smoke in the apartment and he had taken pictures of cigarette butts in the sink. The landlord then sent another email (LL#04) to the tenant on 29-July-2022 stating this with the pictures included. At that time the landlord told the tenant he was evicted.
13. 01-August-2022 the landlord said he sent the tenant an email with his eviction notice (LL#04). The notice is signed and dated for 01-August-2022 with a termination date of 01-September-2022. The tenant is still living in the apartment.
14. The landlord said that he doesn't have a vendetta against the tenant, and he said he wasn't aware that the tenant had a cat. The landlord said that he had a relationship with the tenant's family and had hoped that the tenant would have been a long term tenant, his rent is paid automatically and if he had followed the rules around smoking in the apartment, then he wouldn't have given him a termination notice.

Tenant's Position

15. The tenant agrees to the terms of the rental agreement as stated by the landlord.

16. The tenant said that when the landlord came to the apartment in January he didn't know that he was coming and it frightened him. He said he put his cat in the bedroom before answering the door.
17. The tenant said that the smell of marijuana must be coming from an unsealed bag, he uses marijuana for pain management.
18. The tenant believes that they got off on the wrong foot and that the landlord has a vendetta against him.
19. The tenant said he has a note from the doctor for the cat, it is an emotional support animal.
20. The tenant said he asked the landlord's partner if he could smell smoke while he was checking on the issue with the plumbing and he said he couldn't smell smoke.
21. The tenant said that the butts in the sink could have come from the issues with the plumbing and he didn't give the landlord permission to take the pictures.

Analysis

22. The landlord has shown in the rental agreement that smoking is not permitted in the apartment. Section 20 of the Residential Tenancies Act, 2018, states:

Notice where material term of agreement contravened

20. (2) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes a material term of a rental agreement, the landlord may give the tenant written notice of the contravention, and if the tenant fails to remedy the contravention within a reasonable time after the notice has been served, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises.

(3) Where the tenant gives a landlord notice under subsection (1) or the landlord gives a tenant notice under subsection (2) that a rental agreement is terminated, the notice shall be given

(a) not less than 7 days before the end of a rental period where the residential premises is rented from week to week; and

(b) not less than one month before the end of a rental period where the residential premises is

(i) rented from month to month,

(ii) rented for a fixed term, or

(iii) a site for a mobile home.

(4) 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.

23. Based on the balance of probabilities I find that the landlord's testimony and documentation meets the burden of proof. Both landlords were present at the apartment, one in January and the other in July and both agree that there is smoking in the apartment. The tenant's testimony that there isn't any smoking and that the landlord has a vendetta against him doesn't seem logical. The landlords' visits are 6 months apart, so it doesn't appear they were trying to build a case against the tenant. Also, as the landlord testified, the tenant's rent is automatically paid, so it was in their best interest to have him stay on as a tenant.
24. Further to this, the tenant has testified to having a pet, which is another breach of his rental agreement, although not the issue in question.
25. I accept that the tenant has breached a material term of his rental agreement. I find that the landlord's notice to terminate meets the requirements of the Act. The termination notice is valid and that the tenant should have moved on or before 01-September-2022.

Decision

26. The landlord's claim for vacant possession succeeds.
27. The tenant shall vacate the premises immediately.
28. 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: Hearing expenses reimbursed \$20.00

29. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#04) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

30. The tenant shall:
 - Vacate the property immediately
 - 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.
 - Pay to the landlord the cost of his hearing expenses of \$20.00.

The landlord

- Will be awarded an Order of Possession.

13 September, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office