

Residential Tenancies Tribunal

Application: 2022 No. 703NL

Decision 22-0703-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:25 AM on 27 September 2022 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". The respondent, [REDACTED], hereinafter referred to as "the tenant", also participated.

Issues before the Tribunal

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

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 1022, and 24 of the *Residential Tenancies Act, 2018*.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

6. The landlord stated that she had entered into a rental agreement with the tenant on 07 April 2020 and the agreed rent is set at \$705.00 per month. The rental unit is an apartment in a rental complex, with shared hallways and elevators, and a common entranceway.

7. With her application, the landlord submitted a copy of a video which had been taken by the security camera in the main entranceway on 11 August 2022. In this video, the tenant can be seen talking with another individual as he enters the complex, and he then makes his way to the elevator. Shortly afterwards, he exits the elevator, returns to the main entrance door, and he has another conversation with that same individual. During that second encounter, the tenant kicks the main entrance door and the glass at the bottom part of the door shatters as a result.
8. The landlord stated that the individual the tenant had been conversing with does not reside at the complex and he had not made any complaint to her about the tenant. She surmised, however, that this person was probably startled by the tenant's behaviour.
9. With her application, the landlord submitted an invoice from Tulk's Glass & Key Shop showing that she was charged \$659.81 to have that door repaired and she stated that that amount has been added to the tenant's account for payment.
10. The landlord testified that her company does not tolerate tenants who deliberately damage their property, and because of the incident that was shown in the video, the tenant was issued a termination notice on 16 August 2022. A copy of that notice was submitted with her application. That notice was issued under section 24 of the *Residential Tenancies Act, 2018*, and it had an effective termination date of 22 August 2022.
11. The landlord stated that the tenant has not moved out of the property as required and she is seeking an order for vacant possession of the rented premises.

The Tenant's Position

12. The tenant acknowledged that he had kicked the door, on that date, as shown in the video, and he acknowledged that the glass shattered as result. He argued, though, that it was not done premeditatedly.
13. The tenant stated that the other person shown in the video is a drug addict and he has had numerous confrontations with him over the past 4 months, and he pointed out that he is not even supposed to be living at the complex. The tenant denied that he had been interfering with anyone's peaceful enjoyment, and instead claimed that since his time living at the complex, he has been trying to keep the peace and to help his neighbours. He claimed that this other person shown in the video, as well as other drug addicts living at the complex, are the ones that are disturbing the peace.

Analysis

14. There is no dispute that the tenant had kicked the main entrance door to the complex and that the glass in that door had shattered as a result.

15. Deliberately damaging property at a rental complex is an explicit violation of statutory condition 2, set out in section 10 of the *Residential Tenancies Act, 2018*, which 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.

16. Where a tenant violates this statutory condition, the *Act* provides the following remedy to landlords:

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.

That is, where a tenant deliberately damages property at a rental complex, the landlord may require that the tenant repair that damage, after giving a notice under s. 22.(1), and if the tenant does not comply with that notice within a reasonable amount of time, the landlord may terminate their agreement, citing this section of the *Act*.

17. However, this is not the route the landlord took here. Instead of issuing a notice requiring that the tenant repair the door, the landlord straightaway issued a termination notice, citing s. 24 of the *Residential Tenancies Act, 2018*, which may be issued where a tenant contravenes statutory condition 7.(a), which states:

7. Peaceful Enjoyment and Reasonable Privacy -

(a) The tenant shall not unreasonably interfere 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.

18. The question, then, as I see it, is whether the tenant's deliberate damage of the entrance door is, in addition to being a violation of statutory condition 2, also a violation of statutory condition 7.(a). I was not persuaded that it was.
19. That sort of deliberate damage could probably constitute a violation of this statutory condition if it was done, e.g., while attempting to violate the landlord's, or another tenant's privacy, or if the damage was carried out in such a manner (e.g., extremely loudly) so that other residents could not quietly and peacefully enjoy their apartments. Deliberate damage may also conceivably be deemed to be a violation of this statutory condition if it is the sort of behaviour that the tenant repeatedly and vexatiously engages in.
20. But no evidence or testimony was presented at the hearing to establish that there had been any breaches of privacy, or to establish that the quiet and peaceful enjoyment of any of the other residents at the complex had been interfered with. The individual seen talking to the tenant in the video gave no evidence at the hearing and the landlord testified that he does not reside there. Furthermore, the landlord presented no evidence indicating that this sort of behaviour is typical of the tenant, or that he had caused other damages at the complex or to his apartment. I am of the view, then, that this was a one-time occurrence and that the tenant, as he says, had not woken up that morning with the intention of damaging the door.
21. Given all of this, I find that the landlord had not established, on the balance of probabilities, that, in addition to violating statutory condition 2, the tenant had also contravened statutory condition 7.(a). Where a tenant only causes damage at a rental complex, but does not interfere with anyone's privacy or peaceful enjoyment, the remedy contemplated by the *Act* is addressed in section 22.
22. Accordingly, I find that the landlord was not in a position, on 16 August 2022, to issue the tenant a termination notice under section 24 of the *Act*.

Decision

23. The termination notice issued to the tenant on 16 August 2022 is not a valid notice.

24. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

04 October 2022

Date



John R. Cook
Residential Tenancies Tribunal