

Residential Tenancies Tribunal

Applications: 2022 No. 0853 NL

Decision 22-0853-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 2:01 PM on 26 October 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing, as did [REDACTED], who is hereinafter referred to as “the authorized representative” (L#1).
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate in the hearing.
4. An affidavit of service was provided by the landlord (L#2) confirming that the tenant was served by email ([REDACTED]) of the claim and proof of this email sent on 29 September 2022 was provided (L#3).
5. The details of the claim were presented as an originally fixed term rental agreement that began on 01 October 2022. Monthly rent was set at \$850.00 and a security deposit in the amount of \$630.00 was collected. A copy of the original written rental agreement was provided (L#4).
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 an order for vacant possession of the rental premises.

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 and 24 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

10. The tenant was not present or represented at the hearing and I was unable to reach her by telephone at [REDACTED]. 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 the tenant was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.
13. The landlord's authorized representative amended the claim and stated that they wished to retain the full value of the security deposit collected against monies needed to clean the rental premises and repair damages.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

14. The rental premises is a two apartment dwelling located at [REDACTED]. The tenant resides in the lower level apartment, unit A. The main floor apartment is located by other tenants, a family with children.
15. The landlord testified that she began having issues with the tenant in July and August of this year. The main floor tenants and other neighbours would complain about garbage being left about the premises. The landlord testified that the tenant would initially pick up this garbage after it was brought to her attention.
16. The landlord testified that she was contacted on 16 September 2022 by a social worker, the police, and Animal Control regarding the rental premises. There was said to be a number of cats and dogs at the premises who appeared to have not been fed in a long time. The landlord testified that she gave 24 hour notice of entry, and that a representative of hers attended the rental premises on 17

September 2022 to inspect. It was on this day that a series of photos were taken (L#5) depicting the “unbelievable” state of the unit. The landlord testified that the photos show dog poop everywhere on the floor, dishes left in the sink, and that the bathroom is destroyed.

17. The landlord issued a termination notice (L# 6) to the tenant by email on 17 September 2022 with a cc to the tenant’s mother. The issue date on this notice is 16 September 2022 and the effective move out date is 22 September 2022. The landlord testified that she issued the notice under both section 22 and section 24 of the *Act* because both sections apply and that she is concerned with the health and welfare of her tenants in the main floor of the rental premises. She testified that the main floor tenants have children and that they report obnoxious odors from the lower level unit as well as flies coming through their vents.
18. The landlord referred to a series of text messages submitted (L#7) and testified that she emailed the tenant using an email address recently provided to her. She also referred to text messages with the tenant’s mom who writes that “*no one can get contact*” with the tenant. Of note is that the landlord also submitted a request for an order without a hearing on 26 September 2022 because it “confirmed” by multiple government parties that the tenant was no longer residing in the rental premises (L#8). As however, rent has continues to be paid on the tenant’s behalf by government, the landlord has been unable to take possession of the premises through abandonment.

Analysis

19. 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.
20. 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.
21. As identified in paragraph 18, no one can contact the tenant and the landlord has been informed by multiple government parties that the premises are vacant. The landlord testified that she issued the termination notice on 17 September 2022 because she had been contacted by multiple government parties regarding the

rental premises and she had a representative inspect the interior of the premises on that day. A review of the photos from this inspection depict an alarming state of affairs, with an excessive amount of mouldy animal excrement across the floors, a thick layer of dirt in the kitchen and bathtub, and broken and wet looking bathroom floor. The tenant nonetheless retains possession of the rental unit because keys have not been returned and rent continues to be paid in her name.

22. As such, I find that the landlord successfully established on the balance of probabilities that the tenant has created and continues to create an unreasonable disturbance that interferes with the landlord's right to maintain and manage their rental property.
23. 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.

24. As the notice dated 16 September 2022 and issued 17 September 2022 meets all the requirements set out in this section of the *Act*, and as it was properly served, it is a valid notice

Issue 2: Security Deposit (\$630.00)

Relevant Submissions

25. The landlord is very concerned about the state of her rental premises and how it continues to deteriorate each date it remains in its current state. Her authorized representative testified that they anticipate a bill of approximately \$20,000.00 to

repair and restore the premises after the take possession of the unit. The landlord would like to retain the security deposit against these expenses.

Analysis

26. Section 14, sub 10, 12 and 14 of the *Residential Tenancies Act, 2018* states:

(10) Where a landlord believes he or she has a claim for all or part of the security deposit,

(a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or

(b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.

(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

(14) Where a landlord does not make an application under subsection (11), he or she is not prohibited from making an application under section 42 other than an application with respect to a claim against the security deposit.

27. From reviewing the photos of the rental premises, it appears highly likely that the costs to clean, let alone repair damage to floor in the rental premises, will far exceed the amount of the \$630.00 security deposit collected. As such, I find that the landlord is entitled to retain its full value.

Decision

28. The landlord's claim to retain the security deposit succeeds in the full amount of \$630.00.

Hearing Expenses

29. The landlord claimed the \$20.00 expense of applying for hearing. As her claim as been successful, the tenant shall pay this hearing expense.

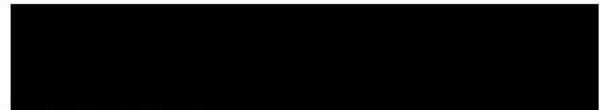
Summary of Decision

30. The landlord is entitled to the following:

- An order for vacant possession of the rented premises,
- An order to retain the full value of the \$630.00 security deposit collected.
- An order for payment in the amount of \$20.00 for hearing expenses.
- 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 October 2022

Date



Jaclyn Casler
Residential Tenancies Tribunal