

Residential Tenancies Tribunal

Application 2022 No. 954NL

Decision 22-0954-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 18 January 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord," participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the tenant," was not in attendance.

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 is section 21 of the *Residential Tenancies Act, 2018*, sections 4 and 32 of *The St. John's Residential Property Standards By-Law*, and the rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach him by telephone. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. 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 he has been properly served. With his application, the landlord submitted an affidavit stating that tenant had been served with the application, by e-mail, on 06 January 2023, and a copy of that e-mail was submitted with his application. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

7. The landlord stated that he had entered into a 1-year, fixed-term lease with the tenant on 01 April 2022, and a copy of that executed lease was submitted with his application. The agreed rent was set at \$850.00 per month, and it is acknowledged in the submitted lease that the tenant had paid a security deposit of \$425.00.
8. With his application, the landlord submitted a letter from Newfoundland Power, dated 24 May 2022, informing the landlord that they had disconnected the electricity service supplied to the tenant's rental unit. The landlord stated that the tenant had an outstanding balance with Newfoundland Power, and they were no longer willing to work with the tenant. He also testified that Newfoundland Power had refused to transfer the account to his name.
9. The landlord pointed out that he lives out of the province, and during the summer of 2022, he was working in Europe. After he received this notice from Newfoundland Power, he had his son check on the property, and his son reported to him that he viewed working lights in the tenant's apartment, and had assumed that the electricity service had been reconnected. However, when the landlord returned to the province in October 2022, he determined that the electricity service had not been reconnected at all, but rather the tenant was running an extension cord into his unit from a neighbour.
10. In October 2022, the tenant told the landlord that he was working with his sister to have the electricity service restored, but that never happened.
11. The landlord stated that he inspected the property in October 2022, and he found that the tenant was using an extension cord to keep his refrigerator running, and to power some lights. But he claimed that there is no heat in the unit, and the tenant has been using a propane camping-stove to cook. That landlord stated that using such a stove is a fire hazard, and he also complained that the lack of heat at the property is contributing to further problems—he claimed that there is

moisture and mold in the property, and he also complained about a rodent issue. He also claimed that the tenant has also removed the electrical meter from the unit, and he has broken into other apartments in the house to use another resident's washer and dryer.

12. Because of these issues, on 18 October 2022, the landlord served the tenant with a termination notice, and a copy of that notice was submitted with his application. That notice was issued under section 21 of the *Residential Tenancies Act, 2018*, and it had an effective termination date of 20 October 2022. The tenant has not complied with that notice.
13. The landlord further complained that, over the past several weeks, the tenant has set up a generator on the property to provide him with some electricity, and he is now receiving noise complaints from his neighbours.
14. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

15. In St. John's, the municipality where this rental unit is located, the "minimum standards and regulations for the occupancy and maintenance of residential property" are to be found in *The St. John's Residential Property Standards By-Law*.
16. According to that by-law:

GENERAL DUTIES AND OBLIGATIONS

4.1 No person shall use, permit the use of, rent, or offer to rent any dwelling, dwelling unit, or room in violation of any provision of this By-Law or any other by-law or regulation of the City.

17. In short, a rental unit that is not maintained in accordance with the standards set out in that by-law (or other by-laws or regulations of the City) is not to be used by a person as a dwelling unit and is, therefore, "unfit for habitation."
18. Section 32 of this by-law states:

ELECTRICAL

32.1 Every dwelling shall be connected to an electrical supply system and shall be wired for electricity.

32.2 An adequate supply of electric power shall be available at all times in all parts of every occupied dwelling.

19. I accept the landlord's evidence and testimony in this matter and I find that the electrical service supplied by Newfoundland Power to the tenant's unit has been disconnected since May 2022. Although the tenant has been running an extension cord into his property for some of his appliances and for some lights, I find that he does not have an "adequate supply of electric power" ... "available at all times in all parts" of his unit. Accordingly, the tenant had caused the rental unit to be in violation of section 32 of *The St. John's Residential Property Standards By-Law* and, therefore, had made the unit unfit for habitation.
20. Section 21 of the *Residential Tenancies Act, 2018* states:

Notice where premises uninhabitable

- 21. (1) Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes statutory condition 1 set out in subsection 10(1), the tenant may give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises effective immediately.***
- (2) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where an action of, or a failure to act by, a tenant makes a residential premises unfit for habitation, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises effective immediately.***
- (3) In addition to the requirements under section 34, a notice under this section shall***

- (a) be signed by the person providing the notice;***
- (b) state the date 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***
- (c) be served in accordance with section 35.***

21. As the tenant had made the rental unit unfit for habitation, I find that the landlord was also in a position, on 18 October 2022, to issue the tenant a termination notice under section 21 of this Act. As the landlord's notice meets all the requirements set out in this section of the Act, the notice is valid.

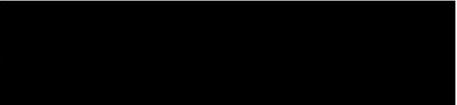
Decision

22. The landlord's claim for an order for vacant possession of the rented premises succeeds.

23. 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.

20 January 2023

Date


John R. Cook
Residential Tenancies Tribunal