

Residential Tenancies Tribunal

Application 2022 No. 1094NL

Decision 22-1094-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:03 PM on 16 January 2023 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", respectively. The tenant, [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 are sections 10 and 22 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and there was no telephone number provided where she could be reached by phone. 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 their application, the landlords submitted an affidavit stating that tenant had been personally served with the application on 21 December 2022. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in her absence.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

7. Landlord2 stated that they had entered into a monthly rental agreement with the tenant on 08 July 2022. The agreed monthly rent was set at \$600.00 and the landlords testified that the tenant had paid a \$300.00 security deposit on 03 June 2022.
8. On 26 November 2022, the landlord received a report that the glass panel in the main entrance door to the tenant's apartment had been smashed. When landlord2 went to the unit, the tenant had the glass cleaned up at that time. She testified that the tenant had informed her that she did not know who had smashed the glass out of the door, and when she discovered it, she notified the RCMP.
9. On 30 November 2022, further damage was caused to that door, and by the tenant this time. Landlord2 stated that the tenant had could not gain entrance to her apartment, as she could not find her key, so she had kicked in this door, further damaging the door and the door box. She had also made the deadbolt inoperable, and the hardware for the living room window was also damaged when someone who was helping her went through that window.
10. Because of this damage to the door, on 30 November 2022, the landlord issued the tenant a notice to repair the door, and a copy of that notice was submitted with her application. The repairs were to be completed by 02 December 2022.
11. Landlord2 testified that the tenant had not repaired the door as required, and on 15 December 2022, she issued her a termination notice. That notice was also submitted with the landlord's application. This notice was issued under section 22 of the *Residential Tenancies Act, 2018*, and it had an effective termination date of 21 December 2022.
12. The tenant has not moved out, as required, and the landlord is seeking an order for vacant possession of the rented premises.

Analysis

13. Statutory condition 2, set out in section 10 of the *Residential Tenancies Act, 2018* 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.*

and section 22 of this Act states:

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.*

(3) *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.*

14. Based on landlord2's testimony, there seem to have been 2 separate incidents where damage was caused to the entrance door. The glass was smashed out on 26 November 2022, and the tenant kicked that door in on 30 November 2022.
15. Regarding the first incident, I find that testimony presented by the landlord about what happened on that day does not establish that the tenant had violated statutory condition 2, quoted above. Landlord2 testified that she did not know

how that damage was caused and she made no assertion at the hearing that this was caused by any deliberate or negligent act on the part of the tenant. If that is the case, then the tenant is not responsible for carrying out these repairs.

16. It was landlord2's assertion, though, that the tenant had deliberately kicked in that same door on 30 November 2022, causing further damage to the door box and the deadbolt. That sort of deliberate damage does contravene statutory condition 2, and the tenant would be liable for any required repairs.
17. However, I was not convinced that the notice to carry out the required repairs, issued on 30 November 2022, is valid. Firstly, in that notice, the landlord makes no mention of any damage to a door box, deadbolt, or widow hardware, but rather only requires that the tenant repair the broken glass. But if the tenant did not cause that damage, she is not responsible for repairing it. And secondly, this notice requires that these repairs be carried out by 02 December 2022. But the *Act* states that such a notice would require that the tenant come into compliance with statutory condition 2, i.e., have the repairs completed, "within 3 days after the notice" was issued. As the notice was issued on 30 November 2022, the 3 days after that notice was issued are 01, 02, and 03 December 2022. Therefore, the landlord was seeking to have these repairs carried out a day sooner than permitted by the legislation.
18. As that notice to carry out the repairs was not valid, I conclude that the landlord was not in a position, on 15 December 2022, to issue the tenant a termination notice under section 22 of the *Act*, and the notice issued on that date was invalid as well.

Decision

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

20 January 2023

Date



John R. Cook

Residential Tenancies Tribunal