

Residential Tenancies Tribunal

Application 2023-0192-NL

Decision 23-0192-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:32 p.m. on 4-May-2023.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. [REDACTED], also owner of the rental unit was present. The tenant, [REDACTED] [REDACTED], hereinafter referred to as "the tenant", was also in attendance with his roommate [REDACTED]. All parties attended via teleconference.

Preliminary Matters

3. The tenant claimed to have a roommate who was also present for the hearing but did not participate in any way. The landlord admitted that she gave permission for him to stay in the unit for 1-2 months about a year ago but denied that he was a tenant. She stated that she never received any rent monies from him and thought he was gone. She asked him to leave the unit in January 2023 and thought he had left.
4. The landlord submitted an affidavit (LL#1) showing that she served the tenant with notification of the hearing in person on 22-April-2023 at the residential premises. The tenant confirmed that he received the documents on that day. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. The rental unit is a basement apartment. There is no written rental agreement, only a verbal agreement that commenced in March 2017. Rent is \$725.00 per month. A security deposit of \$362.50 was paid in March 2017 and is still in the possession of the landlord.

Issues before the Tribunal

6. The landlord is seeking:
 - An order for vacant possession of the rented premises

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10, Section 20 and Section 22

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

9. The landlord submitted 2 separate termination notices. The first *Landlord's Notice to Terminate Early – Cause* (LL#2) was issued to the tenant on 1-February-2023 under section 20; Notice where material term of agreement contravened to vacate on 28-February-2023. The second *Landlord's Notice to Terminate Early – Cause* (LL#3) was issued 1-March-2023 under section 22; Notice where tenant's obligation is not met to vacate on 7-March-2023.

Landlord's Position

10. The landlord stated that in addition to the 2 termination notices with cause given to the tenant, she also gave the tenant a Landlord's Termination Notice – Standard on 1-February-2023 to vacate on 1-May-2023. With regards to the first termination notice given with cause under section 20, the landlord states that the tenant has contravened the agreement by smoking on the premises. She states that she texted the tenant several times to ask him to refrain from smoking in the unit. She states that the tenant continued to smoke in the unit. She said she can call a witness to verify her testimony however I did not allow a witness as the landlord never submitted a witness list or even asked a witness to participate in the hearing today. With regards to the second termination notice with cause submitted, the landlord states that the tenant damaged the front door by kicking it in and the kitchen cupboards were taken down. The landlord states that she never gave a written notice as to what the damages were with a timeframe to have the damages fixed. She states that all conversations were verbal. She asked the tenant to fix the door but eventually had to pay to have the door fixed herself. The landlord's position is that the tenant was given notice 3 times to vacate and she feels that he has had ample time to find a new place to live.

Tenant's Position

11. The tenant states that he never received a standard termination notice on 1-February-2023. He confirms that he did receive the other 2 notices with cause under sections 20 and 22. The tenant states that he did receive 3 or 4 text messages from the landlord asking him to stop smoking in the unit and when asked if he stopped smoking, his response was yes. With regards to the second termination notice with cause under section 22, the tenant denies any damage to the house other than damaging the front door when it would not open and says that he fixed the door himself. He states that he always kept the house in good shape and always clean.

Analysis

12. I do not accept the landlord's testimony that she issued a standard 3 month termination notice as it was not submitted as evidence and there was no verification of service submitted by the landlord. Further, the tenant states that he did not receive the termination notice indicated by the landlord to have been delivered on February 1, 2023.
13. With regards to the first termination notice with cause under section 20; Notice where material term of agreement contravened (LL#2), I accept the landlord's testimony that the tenant was smoking in the unit, however the landlord did not provide proof that she gave the tenant written notice of the contravention with a reasonable time to remedy the contravention. The tenant confirmed that he did receive a text message asking him to stop smoking and he states that he did stop. The landlord did not provide any proof to show that he continued to smoke in the unit.
14. With regards to the second termination notice with cause under section 22; Notice where tenant's obligation not met (LL#3), I accept the landlord's testimony that the tenant broke the door and the cupboards but again the landlord did not provide written notice identifying the repairs needed with a time frame to have the repairs completed. The tenant stated that he fixed the door. The landlord did not show any verifiable evidence of the damages to the unit or tenant liability for those damages.
15. The relevant subsections of section 20 of the *Residential Tenancies Act, 2018* state:

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.

16. The relevant subsections of section 22 of the *Residential Tenancies Act, 2018* state:

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.

1. (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.

Decision

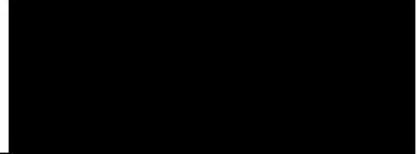
17. I find that the termination notice with cause under section 20 issued on 1-February-2023 is not a valid notice.
18. I find that the termination notice with cause under section 22 issued on 1-March-2023 is not a valid notice.

Summary of Decision:

- The landlord does not succeed in her claim for vacant possession.

April 8, 2023

Date


Pamela Pennell, Adjudicator
Residential Tenancies Office