

Residential Tenancies Tribunal

Application 2023-0193-NL
Application 2023-0205-NL

Decision 23-0193-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:05 a.m. on 30-March-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, participated in the hearing, also present was authorized representative [REDACTED]. The landlord, [REDACTED], hereinafter referred to as “the landlord”, was also in attendance with authorized representative [REDACTED]. All parties attended via teleconference.

Preliminary Matters

3. The tenant’s representative submitted an affidavit showing that she served the landlord with notification of the hearing testing the validity of the termination notice and the landlord’s representative in turn served the tenant with a counter claim seeking vacant possession.
4. The rental unit is a 1 bedroom unit, ground floor in a 3 unit building. There is no rental agreement however, the landlord is confident that she did sign one back in 2011. There was dispute as to when the tenant actually moved in. The tenant did not speak for himself although he did attend the hearing.

Issues before the Tribunal

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

The tenant is seeking:

- A determination of the validity of the termination notice issued to him by his landlord’s representative

Legislation and Policy

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

Issue 1: Vacant Possession of the Rental Premises

Issue 2: Validity of Termination Notice

Relevant Submissions

8. The landlord stated that she had entered into a rental agreement with the tenant around the end of 2012. She states that she believes there was a written rental agreement at the time but she do not have it, and the tenant's representative could not confirm the date of moving in and she do not have a copy of the rental agreement either. Rent is \$995.00 a month and is paid through 2 different agencies and is paid on the first of each month. The landlord confirmed that she has a security deposit in her possession in the amount of \$250.00
9. On 23-February-2023, the landlord visited the rental unit and she discovered the unit to be damaged due to excessive smoke and poor upkeep. She identified repairs that she felt needed to be completed. On 24-February-2023, she issued the tenant a landlord's request for repairs form (LL#1) dated 24-February-2023 asking to have the repairs (listed below) to be completed on or before 27-March-2023. 5 items were listed as follows:
 - a. All walls, ceilings, baseboards, cabinets, light fixtures and appliances cleaned to remove severe smoke damage.
 - b. All walls, ceilings, baseboards and cabinets painted due to severe smoke damage
 - c. All garbage and debris removed from floors due to excessive hoarding as they block heaters
 - d. No pets permitted on property / no smoking
 - e. Appliances fully cleaned

10. The landlord stated that she returned to the unit on 27-February-2023 to find that the repairs had not been completed and gave the tenant a termination notice (LL#2) dated 27-February-2023 to vacate the premises by 6-March-2023. The landlord stated that she gave the tenant extra time to get the repairs done as per the tenant's representative's request and when they were not completed, issued a second termination notice (LL#3) dated 3-March-2023 to vacate on 9-March-2023.

Landlord's Position

11. The landlord stated that the tenant has not complied with any of the issues on her request for repairs list. She stated that when she returned to the unit on 27-February-2023 she could see some attempts to rectify the problems but the issues were not fixed. The landlord submitted pictures dated 23-February-2023 (LL#4 & LL#5) showing the damages to the unit and then she submitted follow up pictures dated 3-March-2023 (LL#6 & LL#7) showing the difference in the unit. The landlord's position is that the damages to her unit are still prevalent and little attempt was made to rectify the problems.
12. Because the tenant had not completed all of the requested repairs, the landlord initially issued him a termination notice on 27-February-2023, and a copy of that notice was submitted with the tenant's application. The landlord stated that the tenant asked for some extra time to get the unit painted and the landlord agreed. On 3-March-2023, the landlord issued a second termination notice to vacate under section 22 of the *Residential Tenancies Act, 2018* (Tenant's obligation not met). This notice was also submitted with the landlord's application.

Tenant's Position

13. The tenant's representative acknowledged receiving the notice to carry out these repairs and she acknowledged that the tenant had received the first termination notice dated 27-February-2023 but did not receive the second termination notice dated 3-March-2023.
14. The tenant's representative would like to have a determination made as to whether or not the termination notice given to him by his landlord is a valid notice as she feels that every effort was made to clean the unit. The tenant's representative submitted photographs (TT#1 & TT#2) showing the walls looking cleaner and the unit looking tidier.
15. The tenant's representative stated that she had cleaned the unit after the tenant had received the landlord's request for repairs and she also claimed that she washed down all the walls and cleaned the bathroom and the appliances.

Analysis

16. I accept the landlord's testimony that there was an attempt on the part of the tenant and his representative to clean the unit however the photographs presented by the landlord (LL#6 & LL#7) show that the walls, ceilings, baseboards, light fixtures and appliances were still dirty and discoloured due to smoke damage. Those pictures were dated for 3-

March-2023 which confirms that the request for repairs were not carried out in the timeframe given as per landlord's request for repairs. The walls did not appear to have been painted and the tenant's representative stated in her testimony that she washed the walls. The pictures did show a big difference in the amount of garbage around the floors. The landlord's #4 item on her request for repairs form (LL#1) stated no pets permitted/no smoking. I did not deal with the pet/smoking issue as having a pet and smoking in a rental unit falls under section 20; Notice where material term of agreement contravened. I do identify thou that the smoking has contributed to the discoloration of the paint on the walls/ceilings and the surface of the appliances. The photographs from the landlord (LL#8) confirms that smoking is occurring in the unit. The tenant's photographs (TT#1) focused on the walls and the bedroom. Tenants photographs (TT#2) are dark and not close up enough to see relevant areas. I am unable to see the top of stove, baseboards, cabinets, and light fixtures. Those photos are not dated.

17. With respect to the second termination notice issued to the tenant on 3-March-2023, The landlord testified that she, along with her representative hand delivered it to the tenant. The tenant's representative states that the tenant did not receive it. The tenant's representative was not there at the time of delivery. I accept the landlord's testimony that she served the second termination notice to the tenant on 3-March-2023.
18. Statutory condition 2, set out in section 10.(1) of the *Residential Tenancies Act, 2018* states:
 - i. **Statutory conditions**
 - ii. **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:**
 - iii. ...
 - iv. **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.**

19. The relevant subsections of section 22 of the *Residential Tenancies Act, 2018* state:
 - i. **Notice where tenant's obligation not met**
 - ii. **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.**

2. (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.*

Decision

20. I find that the statutory obligation of the tenant to keep the residential premises clean has not been met. I find that the second termination notice issued to the tenant on 3-March-2023 is a valid notice.
21. The landlord's claim for an order for vacant possession of the rented premises does succeed.
22. The tenant shall vacate the premises immediately
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.

Issue 4: Hearing expenses reimbursed \$20.00

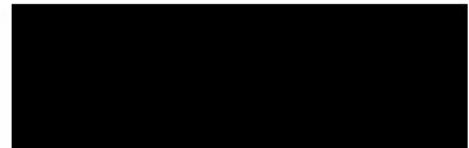
24. The landlord is not seeking reimbursement of the \$20.00 for the cost of the hearing.

Summary of Decision:

25. The landlord is entitled to the following:
 - An order for vacant possession of the rented premises
 - 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.

April 11, 2023

Date


Pamela Pennell, Adjudicator
Residential Tenancies Office