

Residential Tenancies Tribunal

Application 2023-0407-NL
2023-0554-NL

Decision 23-0407-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:53 p.m. on 16-August-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent and counter applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
4. The tenant submitted an authorized representative form (TT#01) naming [REDACTED]; she attended the teleconference and will hereinafter be referred to as “the authorized representative.”
5. The tenant presented four witnesses (TT#02), [REDACTED] (tenant’s witness1), [REDACTED] (tenant’s witness2), [REDACTED] (tenant’s witness3) and [REDACTED] (tenant’s witness4).

Preliminary Matters

6. The tenant submitted an affidavit (TT#03) stating that he served the landlord with notification of today’s hearing electronically on 03-August-2023. The landlord submitted an affidavit (LL#01) stating that she had served the tenant notification of today’s hearing electronically on 06-July-2023. Both parties confirmed receipt of service.
7. The tenant requested reimbursement of rent for the loss of use of the room locked by the landlord, this was not included in their application and was not considered in this decision.

Issues before the Tribunal

8. The tenant is seeking:
- Validity of termination notice
 - Hearing expenses

The landlord is seeking

- Vacant possession of the rental premises
- Damages \$793.37
- Security deposit applied against monies owed
- Hearing expenses

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
10. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Section 14: Security deposit, Section 18: Notice of termination of rental agreement, Section 21: Notice where premises uninhabitable, and Section 34: Requirements for notices, as well as the Smoke-Free Environment Act and Residential Tenancies Policies and Procedures.

Issue 1: Vacant Possession of the Rental Premises

Issue 2: Validity of termination notice

Landlord's Position

11. The landlord submitted (LL#02) her copy of the rental agreement. She explained that the tenant lived there when she purchased the building; she does not know his move in date. She confirmed that he signed a term lease with her beginning 01-July-2022 until 31-August-2023. The tenant pays \$850.00 a month for rent on the first day of each month. She believes she received his security deposit of \$475.00 with the purchase of the building. She is still in possession of the deposit.
12. The landlord reviewed the details of the tenant obligations in Part 11 of the rental agreement (LL#02). She explained that the tenant agreed to "No smoking as defined under the Smoke-Free Environment Act." She said that the tenant has been smoking marijuana and permitting guests to smoke in the house. She stated she saw tenant's witness⁴ smoking in the house. She declared that this is a violation of his rental agreement (LL#02). As he has violated this agreement, she believes he is required to move. She confirmed that she did not serve a notice to the tenant for material term of agreement contravened.
13. The landlord has served the tenant with a number of termination notices. The first of these notices is on a "landlord's notice to terminate early – cause" form for premises uninhabitable (LL#07). The notice is signed on 26-April-2023 with a termination date of 02-May-2023. She said that she served this to the tenant in person on 26-April-2023. The landlord stated that the tenant has been smoking in the unit and that he has unplugged the H-VAC system. She states that this is a violation of the rental agreement

Part 11. He is not permitted to smoke in the unit and because he has violated the rental agreement he should have to move.

14. The landlord also served the tenant with a notice on a “landlord’s notice to terminate early – cause” form for interference with peaceful enjoyment and reasonable privacy, (LL#05). The notice is signed on 08-June-2023 with a termination date of 14-June-2023. She said that she served this notice both personally to the tenant and also electronically to the authorized representative on 08-June-2023. She said that there have been ongoing issues with the tenant.

15. The landlord stated that the tenant’s Social Worker (tenant’s witness1) reported issues concerning the apartment to the City. She said that they did not approach her with the issues with the house. She provided two letters from the City (LL#06) stating the following repairs were required on the apartment:

March 23, 2023

- Stairs to the upper apartment threads are damaged
- Floor covering in the kitchen is to be replaced
- Interior ceiling in the bedroom is to be repaired

March 25, 2023

- Deteriorated or damaged devices must be replaced
- Unauthorized/unapproved wiring
- Extension cords removed receptacles added as required
- Electric heating must be put in good order

16. The landlord stated that the extension cords were placed there by the tenant. She states that this report to the City has caused her a lot of stress.

17. She also said that the tenant is growing marijuana and she will not have that. She said that she understood that he would have a few plants but doesn’t accept that he has a grow-op.

18. The landlord also states that the tenant keeps unplugging the H-VAC.

19. The landlord states that she has received complaints from other tenants in the building wondering what is going on with this tenant. She said that they can hear banging on the walls. He has called emergency personnel, as well as the City and Light and Power. She provided a letter from Light and Power (LL#10) dated 04-May-2023 and it states that they did a site visit and found that everything was functioning properly and they had no concerns for safety or signs of neglect.

20. The landlord could not determine how frequently she has received calls with concerns from her other tenants about this tenant and she did not provide testimony or statements from the other tenants. She did confirm that none of the tenants have moved.

21. The landlord also gave the authorized representative a text (LL#08) in lieu of a three month notice. She said that the term lease is ending the end of August and she will not

be renewing. The text (LL#08) was sent on 15-June-2023 and states "please accept this notice that if your dad isn't out sooner, I will not be extending the lease and would appreciate him out ASAP! September 30, 2023 is the 3 month notice required. However, if he leases sooner, I'd appreciate it! Thanks."

22. The landlord, followed this text approximately 4 hours later with "Do I need to give this to your dad... please confirm! If I don't hear back from you by this evening... I will drop a letter off to him." She confirmed that this was the only notice she sent for this notice period.

Tenant's Position

23. The tenant also submitted a copy of the rental agreement (TT#04). He confirmed the details of the agreement and said that he took occupancy of the apartment in April of 2020.
24. The authorized representative, confirms that the agreement Part 11 (TT#04) states that there is "No smoking tobacco as defined under the Smoke-Free Environment Act." The authorized representative explained that the tenant has an injury and has been given a medical marijuana prescription for treatment of the injury. She said that the landlord was aware of this prescription, as well as, that he would be growing a few plants. She points out that the rental agreement Part 11 (TT#04) does not have the box check with an agreement for "No smoking cannabis as defined under the Smoke-Free Environment Act." She said that if the landlord mistakenly omitted the inclusion of that clause, this is not the responsibility of the tenant.
25. The authorized representative confirms the receipt of the notification of termination of the rental agreement for premises uninhabitable (LL#07) on 26-April-2023. The tenant confirmed that he has smoked marijuana in the apartment. The tenant's witness4 also confirmed she has smoked marijuana in the apartment. Both deny smoking cigarettes.
26. The tenant's witness1 said that she Works with [REDACTED], she helps individuals find living arrangements and mitigate any issues with their rentals. After the landlord purchased the building tenant's witness1 reached out by telephone on 09-June-2023 to explain who she was and her role. The landlord immediately said don't call this number again and any future correspondence should be in writing. Tenant's witness1 said that she contacted her that email to discuss that the tenant is entitled to proper notice when she is coming to the premises. She said that the landlord hadn't provided this notice previously and had come into the unit when the tenant wasn't home.
27. Her experience is that the landlord was hostile towards her. On 18-July-2023, she received a call on her work phone. The caller asked for the address of Connections for seniors. The caller hung up and she hadn't received her name. She called the number back and the landlord answered. She said that she explained to her we don't do in person visits and that if she required one then she would have to schedule this. The landlord told her to mind her own business, that she was on the way and that it was time for her story to be heard and hung up the phone. She was told by the staff that the landlord arrived at Connections for Seniors, demanding a meeting, which had to be set up for a different time. The staff gave the landlord the numbers of the Executive Director and Director of Programs and Services.

28. She believes the purpose of the landlord going to [REDACTED] was that the she was trying to intimidate her that day. She can understand why it would be difficult for the tenant to deal with the landlord.
29. The authorized representative explained that the landlord was aware that the tenant would have a couple of plants, however, at the time of the notices the tenant had stopped growing plants and had the equipment stored in the corner to sell.
30. The authorized representative disputes that the other tenants would complain about the tenant, she said that they are friends and if there was an issue they would definitely contact them.
31. The authorized representative confirmed receipt of the 3 month notice (LL#08) as stated by the landlord.

Analysis

32. The landlord has served the tenant with a number of termination notices, each of these notices will be assessed as to their compliance to the *Residential Tenancies Act, 2018*.
33. The first issue determined by the landlord is that of the tenant breaching the material term of his rental agreement (LL#02) part 11. She has stated that the tenant is smoking in the unit which violates the agreement. The tenant and one of his guests have confirmed that they have smoked marijuana in the apartment and that because this is not checked on part 11 of the rental agreement, this is an error or omission of the landlord and is not in violation of the signed agreement. However, part 11 of the rental agreement (LL#02) states "No smoking tobacco as defined under the Smoke-Free Environment Act." The definition of smoke under this Act refers to not only tobacco but also cannabis, as follows:

Definitions

2. In this Act

(l) "smoke" or "smoking" means, except in paragraph 2(b) and section 5,

(i) to smoke, hold or otherwise have control over an **ignited tobacco** product or **ignited cannabis**,

34. The smoking of marijuana is a violation of the terms of the rental agreement, that being said, in paragraph 11 the landlord confirmed that she did not serve a notice to the tenant for material term of agreement contravened. The tenant cannot have his agreement terminated for cause without a notice of termination being served for said cause.
35. The landlord did serve a notice on a "landlord's notice to terminate early – cause" form for premises uninhabitable (LL#07). The notice is signed on 26-April-2023 with a termination date of 02-May-2023. The authorized representative confirmed the tenant received the notice personally on 26-April-2023. The landlord stated that because the tenant smokes in the unit and because he has violated the rental agreement, he should have to move. She has also cited that he unplugs the H-VAC. She served him this notice for these reasons. Section 21 of the *Residential Tenancies Act, 2018*, is as follows:

Notice where premises uninhabitable

21. (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.

36. The question at hand is “what make a premises uninhabitable?” Section 07-006 of the Residential Tenancies Policy states:

A rental premises may be considered uninhabitable when any of the following occurs:

- The landlord has not complied with laws respecting health, safety or housing applicable to the rental premises;
- An authoritative body (municipal government) orders that the premises be shut down for safety purposes;
- The landlord or the tenant causes utilities such as electrical power or water to be disconnected;
- Premises become flooded or a sewage system backs-up causing the premises to become uninhabitable

37. As the smoking of marijuana and unplugging of the H-VAC system does not cause the premises to be uninhabitable, the notice served by the landlord for premises uninhabitable is not valid.

38. The next termination notice to be evaluated is a notice on a “landlord’s notice to terminate early – cause” form for interference with peaceful enjoyment and reasonable privacy, (LL#05). The notice is signed on 08-June-2023 with a termination date of 14-June-2023. She said that she served this notice both personally to the tenant and also electronically to the authorized representative on 08-June-2023. The authorized representative confirms receipt of notice as stated.

39. The landlord cites the reasons for interference with peaceful enjoyment are as follows:

- The tenant and the tenant’s witness¹ reported issues with the apartment to the City and that this has caused her stress
- The tenant pulled out insulation from the ceiling and interfered with the contractors
- The tenant is growing marijuana
- The tenant has unplugged the H-VAC
- The tenant called Light and Power
- The tenant called emergency personnel
- The other tenants have concerns about the emergency personnel
- The other tenants have heard banging from his apartment
- The contractor witnessed the tenant banging on the wall and complaining about the electrical
- The tenant entered a room she locked in his apartment

40. Statutory condition 7.(a), set out in section 10.(1) 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:*

....

7. Peaceful Enjoyment and Reasonable Privacy -

(a) The tenant shall not unreasonably interfere 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.

(b) The landlord shall not unreasonably interfere with the tenant's reasonable privacy and peaceful enjoyment of the residential premises, a common area or the property of which they form a part.

According to Residential Tenancies Policy 7-05 Peaceful Enjoyment, interference of peaceful enjoyment is defined as: "an ongoing disturbance or activity, outside of normal everyday living, caused by the landlord or the tenant". Peaceful enjoyment may include, but is not limited to the following: (i) excessive noise; (ii) aggressive or obnoxious behaviour; or (iii) threats and harassment.

41. The landlord has failed to prove that the tenant's behavior would interfere with peaceful enjoyment as the issues described do not include excessive noise, aggressive or obnoxious behavior, or threats and harassment. Therefore the notice for interference with peaceful enjoyment and reasonable privacy fails.
42. The landlord also gave the tenant notice by text, via the authorized representative that she will not be renewing his term agreement. Section 18 of the *Residential Tenancies Act, 2018* states:

Notice of termination of rental agreement

18. (2) *A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises*

(a) not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;

(b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and

(c) not less than 3 months before the end of the term where the residential premises is rented for a fixed term.

.....

(9) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the person providing the notice;

(b) be given not later than the first day of a rental period;

(c) state the date, which shall be the last day of a rental period, 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

(d) be served in accordance with section 35.

Additionally, Section 34 of the *Residential Tenancies Act, 2018* states:

Requirements for notices

34. A notice under this Act shall

- (a) be in writing in the form prescribed by the minister;*
- (b) contain the name and address of the recipient;*
- (c) identify the residential premises for which the notice is given; and*
- (d) state the section of this Act under which the notice is given.*

43. The landlord confirmed that she did not follow up with a written notice after the original text was sent. The text did not contain the name of the tenant, the address of the rental unit or the Section of the *Act* under which the notice was given. The notice also fails.

Decision

44. The landlord's claim for vacant possession fails, the notices served to the tenant do not meet the requirements of the *Act* and I find that they are not valid.

Issue 3: Damages \$793.37

Landlord's Position

45. The landlord is seeking damages and she submitted a damages ledger (LL#03), as follows:

Damage	Cost
Clean up of insulation	\$350.00
Install in insulation	200.00
Garbage bags	22.98
Plastic for ceiling	25.94
insulation	139.98
Lock on door	22.74
Taxes on materials	31.75
Total	\$793.39

46. She said that after the tenant reported to the City and she was given a list of the repairs required she hired contractors to complete the repair to the ceiling. She provided pictures of the ceiling (LL#04). There are hooks hanging from the ceiling and she said that they were used to support the equipment or plants for the grow-op. She was not able to determine if the hooks were already in the room before the tenant took occupancy. The tenant was already living there when she purchased the property so she cannot speak to the condition prior to his occupancy.

47. She said that there were ongoing issues with the tenant. The contractor reported that the room was full of cannabis plants and that there were large hooks used for this purpose. He said that there was mold in the corner and that they were hired to repair this. He also described that the H-VAC was unplugged and suspected that this was the cause of the mold. He said that the tenant was banging on the walls and claiming that there was something wrong with the electrical (causing additional damages). They put a lock on the room and when they returned the room had been opened, the insulation was pulled down from the ceiling and materials were missing. She provided a sworn affidavit (LL#09) from the contractor stating the same.
48. The landlord disputes that the tenant is unable to reach up to the ceiling, she doesn't accept that he has this issue. She said that he claims he can't reach down to pick up a jug of water from the H-VAC system but she has witnessed him bending over and picking up a stick for his dog, which would be lower. Based on this, she disputes he is telling the truth that he can't reach above his head.
49. The landlord acknowledges that there may have been a dead bird in the insulation, but states that the City told her half the homes in the City have dead animals in their attic. She also questions the proof of tenant's witness2's testimony and states that it is just her opinion.
50. The landlord is seeking the cost for the insulation, labor and the supplies to do this work as well as the cost of putting a lock on the door to keep the tenant out of the room. She provided receipts for the supplies as listed in the damages table (LL#03).

Tenant's Position

51. The tenant confirmed that he used to grow marijuana plants in the room in question. He also confirmed that he put the hooks in the ceiling. The authorized representative, tenant and tenant's witness4 all stated that the room was cleared out for the contractors.
52. The tenant's witness2 is the former property manager for the apartment. She testified that the building is very old and that there were a number of ongoing issues with the tenant's apartment as well as other apartments in the building. She said that the former owner did not do the repairs as it was too costly. The reported issues from the fall of 2021 until the winter of 2022 are as follows:
- There was a leak in the room (in question) and it was required to be replaced as well as other repairs.
 - There is an outlet in that room that sparks.
 - Bathroom – tub surround, toilet and floor need to be replaced due to leaking: a new bathroom is required
 - Living room – wall has to be replaced
 - New range
 - Ceiling in spare bedroom
 - Electric is unstable and needs to be rewired
 - Heaters don't work

- Water coming in through the window in living room, the issue is not the window itself, there is no seal around the outside and allows the water to come in and is damaging the dry wall around the window.
53. The authorized representative said that the landlord had three different people in for the repair to the ceiling. She said that the two individuals refused to put the gyproc in place until the insulation was removed because it was in such a bad state and that another contractor removed the insulation. She provided pictures to show sticks, feathers and fur in the insulation (TT#03).
 54. The authorized representative stated that the tenant has an injury and cannot lift his hands above his head. She said that he wouldn't be able to pull the insulation out of the ceiling. They dispute that they are responsible for this damage.
 55. The authorized representative confirms that the landlord placed a lock on the bedroom door. She said that the electrical in that room is not stable and that they had to have access to that room.

Analysis

56. 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.

Accordingly, in any damage claim, the applicant is required to show:

- That the damage exists;
 - That the respondent is responsible for the damage, through a wilful
 - or negligent act;
 - The value to repair or replace the damaged item(s)
57. In a proceeding under the Residential Tenancies Act, 2018, 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. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.
 58. The landlord acknowledged in paragraph 46 that when she purchased the property the tenant was already living there; she therefore could not speak to the condition of the property before he took occupancy. Although in paragraph 47 her contractor has provided a sworn statement declaring that the unplugging of the H-VAC might have caused the issue with mold in the ceiling, this testimony is disputed by tenant's witness2 in paragraph 52.

59. As the former property manager, tenant's witness2 establishes a timeline of events concerning the damages to the tenant's property. I accept her timeline and testimony that the damages to the ceiling were caused by a leak and were the responsibility of the landlord and not that of the tenant. This testimony is the only evidence of the state of the room prior to the landlord's purchase of the property.
60. As the landlord failed to show that the tenant is responsible for the damages to the ceiling he is not responsible for that damage.
61. I also find that the tenant is not responsible for the cost of the lock, used to keep him out of the room during the repairs. A landlord is not permitted to change a lock to restrict access to a tenant, the tenant has paid for the rental of the apartment which includes that room and she is not entitled to install a lock to keep him out of the room without his permission. Section 10 of the *Residential Tenancies Act, 2018* states:

Statutory conditions

*10. 6. Entry Doors - Except by mutual consent, **neither the landlord nor the tenant** shall, during the use or occupancy of the residential premises by the tenant, **alter a lock or locking system on a door that gives entry to the residential premises.***

Decision

62. The landlord's claim for damages fails.

Issue 4: Security deposit applied to monies owed \$475.00

Relevant Submissions

63. As per paragraph 11, the landlord has declared that, the tenant paid a security deposit of \$475.00; she is still in possession of that deposit. She is requesting to retain that security deposit towards monies owed by the tenant for damages to the apartment.

Analysis

64. The landlord's claim for loss has been unsuccessful, and she shall not retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

Security deposit

14. (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***

Decision

65. The landlords' claim to retain the security deposit against monies owed fails.

Issue 5: Hearing expenses reimbursed

66. Both parties claimed hearing expenses including the application fees of \$20.00 (TT#06 & LL#11) and the cost of printer ink; the landlord is also seeking the cost of paper. As neither of the parties submitted the receipts for office supplies these supplies will not be considered. The tenant's claim was successful and therefore pursuant to policy 12.01, is entitled to reimbursement of the application fee of \$20.00 from the landlord.

Summary of Decision


67. The landlord's claim for damages and security deposit fail

The termination notices dated: 02-May-2023, 14-June-2023, and 30-September-2023 are not valid.

The landlord shall reimburse the tenant for the \$20.00 application fee.

22-August-2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office