

Residential Tenancies Tribunal

Application 2023-0528-NL

Decision 23-0528-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:12 a.m. on 12-July-2023.
2. The applicant [REDACTED] hereinafter referred to as "the landlord", participated in the hearing via teleconference. The respondent, [REDACTED] hereinafter referred to as "the tenant", did not attend.

Preliminary Matters

3. The tenant was not present or represented at the hearing and I was unable to reach her by telephone at the start of the hearing. 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 she has been properly served. The landlord submitted an affidavit with his application stating that he had served the tenant with notice of the hearing, by pre-paid registered mail [REDACTED] [REDACTED] on 23 June 2023 (LL#1). The registered mail tracking indicates that the tenant did not retrieve her mail. In accordance with the *Residential Tenancies Act, 2018* registered mail is considered served 5 days after it has been sent. 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 her absence.
4. The rental unit is a single family dwelling. There is no written rental agreement, only a verbal agreement that commenced on 15- March 2022. Rent is \$650.00 per month due on the 15th of the month. A security deposit of \$325.00 was paid in March 2022 and is still in the possession of the landlord.

Issues before the Tribunal

5. The landlord is seeking:
 - Vacant possession of the rented premises

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 22; Notice where tenant's obligation is not met, Section 19; notice where failure to pay rent and Section 10; Statutory Conditions.

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

8. The landlord submitted a copy of a termination notice that was given on a *Landlord's Notice to Terminate Early – Cause* form (LL#2). The notice was issued to the tenant on 16-May-2023 under section 22; Notice where tenant's obligation is not met and section 19; Notice where failure to pay rent to vacate on 31-May-2023.

Landlord's Position

9. The landlord stated that the tenant did not pay rent when it was due on 15-April-2023. He testified that she paid it late on 30-April-2023 which covered the period of 15-April to 15-May. The landlord testified that the tenant did not pay on the scheduled date of 15-May-2023 and has not paid since. He states that rental arrears are currently in the amount of \$1950.00 covering 15-May to 15-August 2023.
10. The landlord stated that he feels that the tenant is not meeting her obligation to keep the oil tank full and as a result is putting his furnace at risk. The furnace is only 2 years old and the landlord had a maintenance person look at it on 18-April-2023 when the tenant complained of a smell of oil in the unit. The landlord testified that the maintenance person had to bleed the furnace and he was concerned for the life of the furnace if the tank continuously runs dry.
11. The landlord testified that he has several pictures of the oil tank showing that it has been empty dating back as far as 18-April-2023 (LL#3). The landlord states that he does not have a key to his unit and the tenant will not let him in the unit to check the furnace. He enters the premises to take pictures of the gauge on the oil tank to monitor the level of oil in the tank. While on the property, he has asked the tenant when she was outside the unit to keep oil in the tank as per their rental agreement. The landlord stated that he verbally asked the tenant to put oil in the tank on 8-April-2023 and again on 30-April-2023. The landlord stated that the tenant has not complied with his request and as a result he feels that the tenant is not meeting her obligation to keep the unit heated.
12. The landlord testified that the tenant is heating the unit by turning the stove on and keeping the oven door open. The landlord testified that he was contacted by [REDACTED] [REDACTED] advising that they were in the unit in December 2022 and they were aware that the tenant was heating the unit with the oven. The landlord testified that the Town advised him as the landlord that this is an extremely dangerous practice and a potential fire hazard.

13. The landlord states that the tenant is not meeting her obligation as set out in *the Act* and she is interfering with his rights as a landlord which is putting his unit at risk. He states that he cannot enter his unit to check on the furnace which is very worrisome to him. He stated that he attempted to hire a locksmith to change the locks so he could gain entry but he was unsuccessful in getting someone to do that for him.

Analysis

14. Section 19 of the *Residential Tenancies Act, 2018* states:

- a. **Notice where failure to pay rent**
- b. **19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),**
 - i. **(b) where the residential premises is**
 1. *rented from month to month,*
 2. *rented for a fixed term, or*
 3. *a site for a mobile home, and*
 - c. **the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.**
 - i. **(4) 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.*
15. I accept the landlord's testimony that the rent is over due since 15-May-2023 however, the termination notice was given on 16-May-2023 which does not meet the legislative guidelines of 5 days or more as stated above in paragraph 14.
16. I find that the termination notice under section 19 of *The Act* is not a valid notice.
17. 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.

18. The relevant subsections of section 10 ⁴ of the *Residential Tenancies Act, 2018* state:

Statutory Conditions

10. (2) The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or a person whom the tenant permits on the residential premises.

19. In review of the evidence, maintaining oil was part of the rental agreement and it is apparent that the tenant failed to fulfill her obligation to keep oil in the tank at all times. Further, the tenant prohibited the landlord from entering the unit to ensure no damage to the furnace. However, the notice issued in this application was under Section 22 of the Act which deals with repairs and cleanliness. A termination notice has is issued in accordance with the legislation for reasons set out in each particular section. It is apparent that the landlord has issued an incorrect notice.

20. I find that the termination notice under section 22 of the Residential Tenancies Act is not a valid notice.

Decision

21. I find that the landlord's claim for vacant possession under section 22 of the Act does not succeed.

Summary of Decision:

22. The landlord does not succeed in his claim for vacant possession.

July 18, 2023

Date

Pamela Pennell, Adjudicator
Residential Tenancies Office