

Residential Tenancies Tribunal

Application 2023 No. 597NL

Decision 23-0597-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:06 AM on 08 August 2023 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord," participated in the hearing. The respondent, [REDACTED] hereinafter referred to as "the tenant," was also in attendance.

Issues before the Tribunal

3. The landlord is also 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 is section 21 of the *Residential Tenancies Act, 2018*, and sections 4 and 5 of the *City of St. John's Residential Property Standards By-Law*.

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

The Landlord's Position

6. The landlord stated that she had entered into a 6-month, fixed-term rental agreement with the tenant on 15 March 2017, and a copy of that executed lease

was submitted with her application. The agreed rent is set at \$840.00, and it is acknowledged in the lease that the tenant had paid a \$640.00 security deposit.

7. On 22 June 2023, the landlord reported that the tenant was drunk in his apartment and that he had accidentally [REDACTED] causing damage to the unit, including to his furniture. The landlord stated that [REDACTED]
[REDACTED] called the landlord and informed her of the situation and they advised that she should carry out an inspection of the property. They also called Inspection Services with the [REDACTED] and instructed that department to carry out an inspection as well.
8. In the afternoon of 22 June 2023, with 2 inspectors from the City, the landlord entered the unit and carried out an inspection, as directed. With her application, she submitted photographs showing the condition of the apartment on that date. These photographs show that the unit was very dirty and unkempt, and there were bags of garbage all through the unit and on the back deck, and there was garbage and debris on all surfaces in the property. The landlord also pointed out that there were numerous holes in the walls.
9. Of particular concern, though, was the smell. The landlord testified that the unit smelled "like a toilet", and she found it difficult to breathe. In the photographs, it is evident that the toilet was very dirty and the landlord also pointed out that there were buckets on the floor containing urine and feces.
10. The landlord stated that as a result of this inspection, the inspectors immediately posted a "Closure Order and Order to Vacate" on the tenant's door, and a photograph of that notice was submitted with the landlord's application. According to that notice, the inspectors determined that the rental unit is "unfit for habitation due to unsanitary conditions" and it was ordered that the unit be vacated immediately.
11. On the following day, 23 June 2023, the landlord posted a termination notice to the tenant's door, and a photograph of that notice was submitted with the landlord's application as well. This notice was issued under section 21 of the *Residential Tenancies Act, 2018*, and it stated that the tenant was required to vacate the premises immediately.
12. The landlord claimed that the rental unit is no longer suitable for the tenant, and she believes that he should be moved to a special home where his needs can be taken care of. She also testified that the tenant's neighbours are concerned that [REDACTED]
13. The landlord stated that the tenant has not moved out as required, and she is seeking an order for vacant possession of the rented premises.

The Tenant's Position

14. The tenant acknowledged receiving these notices, and he also acknowledged that, on 22 June 2023, the rental unit was in the condition described by landlord at the hearing. However, he stated that that property has since been cleaned up.
15. The tenant stated that he is a Type 2 diabetic and that he finds it difficult to make his way to the toilet in the nights, and as a result he stated that he had to take "temporary measures".
16. The tenant also pointed out that the landlord has accepted the rent for August 2023.

Analysis

17. In [REDACTED] the municipality where this rental unit is located, the "minimum standards and regulations for the occupancy and maintenance of residential property" are to be found in the City [REDACTED] *Residential Property Standards By-Law*.
18. According to that by-law:

GENERAL DUTIES AND OBLIGATIONS

- 4.1 No person shall use, permit the use of, rent, or offer to rent any dwelling, dwelling unit, or room in violation of any provision of this By-Law or any other by-law or regulation of the City.*
19. In short, a rental unit that is not maintained in accordance with the standards set out in that by-law (or other by-laws or regulations of the City) is not to be used by a person as a dwelling unit and is, therefore, "unfit for habitation."
 20. Under the General Duties and Obligations, the by-law continues to state:

- 4.4 The owner and the occupant of a dwelling shall be jointly and severally liable to:*
- (a) *limit the number of occupants thereof to the number permitted by this By-Law;*
 - (b) *Maintain all plumbing, cooking, refrigerating appliances and fixtures and all storage facilities and other equipment therein in a clean and sanitary condition and in good working order;*
 - (c) *keep all exits therefrom clean and unobstructed; and*
 - (d) *Maintain the same in a clean and sanitary condition and free from fire and accident hazards.*

And under section 5 it is written

GENERAL PROPERTY REQUIREMENTS

5.1 (1) All parts of a residential property shall be kept clean and free from

(a) rubbish, garbage, and other debris,

21. I accept the landlord's evidence which shows that the rental unit was not kept in a clean and sanitary condition, in contravention of section 4.4, and that there was a significant amount of garbage and rubbish inside the unit and out in the backyard, in contravention of section 5.1. As such, I am of the same view of the inspectors and I agree that as the tenant was in violation of these sections *The [REDACTED] Residential Property Standards By-Law* he had made the unit unfit for habitation.
22. Section 21 of the *Residential Tenancies Act, 2018* states:

Notice where premises uninhabitable

21. (1) Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes statutory condition 1 set out in subsection 10(1), the tenant may give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises effective immediately.

(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.

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

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

(b) state the date 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

(c) be served in accordance with section 35.

23. As the tenant had made the rental unit unfit for habitation, I find that the landlord was in a position, on 23 June 2023, to issue the tenant a termination notice under section 21 of this Act. As the landlord's notice meets all the requirements set out in this section of the Act, the notice is valid.

Decision

24. The landlord's claim for an order for vacant possession of the rented premises succeeds.
25. 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.

Hearing Expenses

26. The landlord paid a fee of \$20.00 to file this application. As the landlord's claim has been successful, she authorized to retain that amount of the security deposit.

14 August 2023

Date

John R. Cook
Residential Tenancies Tribunal