

Residential Tenancies Tribunal

Application 2023 No. 630NL
Application 2023 No. 650NL

Decision 23-0630-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:49 PM on 08 August 2023 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". The respondent, [REDACTED], hereinafter referred to as "the tenant," was also in attendance.

Issues before the Tribunal

3. The landlord is seeking an order for vacant possession of the rented premises.
4. The tenant is seeking a determination of the validity of a termination notice issued to him on 30 June 2023.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case are sections 10, 21, 22 and 24 of the *Residential Tenancies Act, 2018*.

Issue 1: Vacant Possession of the Rental Premises

Issue 2: Determination of Validity of Notice

Relevant Submissions

The Landlord's Position

7. The landlord stated that he had initially entered into a rental agreement with the tenant to occupy another property he owns on [REDACTED], and the tenant later moved into this unit on [REDACTED]. At the beginning of the hearing, the landlord stated that he may have been living at [REDACTED] since 2017, but he claimed he could not recollect.
8. The landlord testified that on 01 May 2022, the tenant's lease had expired, and on that date a new rental agreement was drafted, and the tenant's son, [REDACTED], was also added as a tenant as he was also moving in. No copy of that agreement was submitted as evidence. In this new lease, the landlord stated that the agreed rent was set at \$1800.00, and he claimed that the tenant had paid a \$372.00 security deposit on 01 May 2022. The landlord acknowledged that the tenant had also paid a security deposit when he moved into [REDACTED], but that deposit was retained by the landlord to compensate him for damages the tenant had caused to that unit.
9. The landlord complained at the hearing that the tenant had caused significant damage at the unit which he had failed to repair. He claimed that the glass in the main entrance door to the property had been broken out, as well as the glass in the window just next to that entrance door. The landlord stated that he had hired Newfoundland Glass to repair that glass and that work was completed in late July 2023. He complained, though, that the glass in the door was broken again just a few days ago.
10. Besides the broken glass, the landlord claimed that several doors in the unit are broken up and badly damaged and he also stated that there are numerous holes in the walls throughout the property. He also complained that there is a smell of cat urine in the unit, and he stated that the tenant is keeping a guard dog in the unit, without the landlord's permission.
11. Because of these issues, on 30 June 2023, the landlord gave the tenant a notice to carry out repairs, and a copy of that notice was submitted with his application. According to that notice, the tenant was to repair the holes in the walls and doors, he was to repair the broken glass in the door, repair the entrance door and clean the interior of the unit.
12. The landlord stated that in anticipation of the fact that the tenant would not complete these repairs, and based, he stated, on the advice of the Director of Residential Tenancies, he issued the tenant a termination notice on the same day that he had issued this notice to carry out these repairs—30 June 2023. That notice was issued under sections 22 (notice where tenant's obligations not met) and 24 (notice where tenant contravenes peaceful enjoyment and reasonable privacy) of the *Residential Tenancies Act, 2018*, and it had an effective termination date of 10 July 2023.

13. The landlord stated that, as anticipated, the tenant had not carried out the required repairs by 07 July 2023. Regarding the issue of peaceful enjoyment, the landlord stated that he did not know why he had issued the notice under that section, as he was not living next door to the tenant. He figured it might have been because he could not get access to the unit and because the tenant is keeping a pet dog.
14. On 14 July 2023, 4 days after the tenant was to move out, based on the first termination notice, the landlord testified that he had issued the tenant a second notice, and a copy of that notice was also submitted with his application. This second notice was issued under section 21 of the *Residential Tenancies Act, 2018* (notice where premises uninhabitable), and it had an effective termination date of that same day.
15. With respect to the issue of uninhabitability, the landlord again pointed out that the windows were broken, that the doors were damaged and missing inside the property, and that there were many holes in the walls.
16. The landlord stated that the tenant has not moved out, as required, and he is seeking an order for vacant possession of the rented premises.

The Tenant's Position

17. The tenant stated that he had initially rented a unit from the landlord on [REDACTED] in either 2017 or 2018. He stated that the landlord's workers forcefully removed him from that apartment and put him into a unit on [REDACTED], where he was living with other residents who he claimed were drug users. He testified that on 01 September 2019 he moved into his current unit on [REDACTED].
18. The tenant stated that his rent is being paid directly to the landlord, on his behalf, by Social Services, and he claimed that the rate of rent is set at \$900.00 per month. He also testified that when he moved into [REDACTED] he had paid a security deposit of \$562.50, and that deposit was held and transferred as a security deposit for this unit when he moved in in 2019. He denied that he had caused any damage to the unit on [REDACTED] and he also denied that he had paid a \$372.00 deposit in May 2022.
19. The tenant testified that in March 2022, the landlord installed walls and a door in the rental property to separate off the upstairs portion of the house from the downstairs portion. In May 2022, the landlord then rented that downstairs unit to [REDACTED], the tenant's son, who he claimed was a drug user and was prone to violent outbursts. The tenant stated that [REDACTED] was not added to his rental agreement, and he denied that the rent for his unit was set at \$1800.00. Rather, he was paying \$900.00 for his upstairs unit, and, under a separate agreement, the landlord was also receiving \$900.00, paid by social services, for [REDACTED]'s downstairs apartment.
20. With respect to the damage the landlord had complained about at the hearing, the tenant denied that he was responsible for that damage and he testified that

there was no damage caused to his upstairs unit. He stated that no windows are broken, no doors are damaged and there are no holes in his walls. He acknowledged that there was damage caused to the downstairs unit, but he claimed that this was caused by [REDACTED].

21. With respect to the notices submitted by the landlord, the tenant claimed that the first notice was not issued to him until 04 July 2023, and not 30 June 2023, as the landlord claimed. He stated that he was at his unit on 03 July 2023, when he heard someone entering the front door, and when he investigated, he discovered that the landlord and some of his workers were breaking into his unit. He refused the landlord entry on that date, and informed him that he was required to provide him with a notice to enter. He testified that the landlord afterwards did give him a notice to enter, and on the following day when the landlord returned, 04 July 2023, he posted the first termination notice to his door.
22. Regarding the second notice, dated 14 July 2023, the tenant denied ever receiving that notice. He also argued that his unit was not uninhabitable, and that there was no damage caused to his upstairs unit. He also claimed that the broken windows the landlord had complained about were repaired by the landlord in early June 2023, and there was no damage to those windows on 14 July 2023. He acknowledged that the window in the door is again broken, but he claimed that this was caused by the landlord when he tried to break into the property a few days ago.

Analysis

23. The burden of proof lies with a landlord to establish the terms of a rental agreement—this includes the burden of establishing the rate of rent, the term of the tenancy, including its commencement date, any special obligations or duties of the tenant, and the identity of the contracted parties. Where there is a disagreement over the terms of a rental agreement, these matters can usually be decided by examining a signed rental contract. No such contract was submitted into evidence by the landlord.
24. The landlord stated that the rate of rent was set at \$1800.00 per month, while the tenant stated that it was \$900.00. The landlord stated that the tenant paid a security deposit of \$372.00 on 01 May 2022, while the tenant stated that he had paid \$562.00 when he moved into [REDACTED], and that that deposit was transferred. The landlord made 2 claims about when this tenancy began on Lime Street—early in the hearing, he stated that it may have been as early as 2017, and later he claimed that the tenant only moved in on 01 May 2022. The tenant stated that he moved into [REDACTED] on 01 September 2019. The landlord stated that [REDACTED] was added to the tenant's lease in May 2022, while the tenant denied that he had signed any new agreement with the landlord or that his original agreement had been amended.
25. As no other evidence was presented at the hearing that would allow me to decide these contested issues, e.g., a written rental agreement, I have to conclude that

the landlord had failed to meet his burden of proof in these matters, and I therefore make the following findings: this tenancy began on 01 September 2019, the agreed rate of rent was set at \$900.00, and the tenant paid a \$562.50 security deposit. With respect to ■■■, I find that he was residing at the property on ■■■ Street under a separate rental agreement, and that he was also paying \$900.00 per month. The landlord claimed that he had received a \$372.00 security deposit on 01 May 2022, but given the forgoing, I find it probable that that deposit was paid on behalf of ■■■, not the tenant.

26. With respect to the termination notices submitted by the landlord, I find that they are not valid.
27. Statutory condition 2, set out in 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.

and section 22 of this Act states:

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.

(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.

(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.

28. I pointed out to the landlord at the hearing that if he had provided his tenant with a notice to carry out repairs, then he is required to wait until the repair completion deadline had expired before he can issue a termination notice under this section of the *Act*. According to the notice to effect repairs, which the landlord had stated he had issued to the tenant on 30 June 2023, the tenant had until 07 July 2023 to have those repairs completed. But instead of waiting until 08 July 2023 before issuing a termination notice, as required here, the landlord issued the notice on 30 June 2023, the same day the request for repairs was supposedly issued. That renders it invalid.
29. With respect to the other issue identified in this notice, the issue of peaceful enjoyment, the landlord stated at the hearing that he did not know why he had identified that section, and no further or compelling evidence was given by him to establish that the tenant had been unreasonably interfering with the landlord or with any others tenants.
30. This leaves the second notice, dated 14 July 2023. Section 21 of the *Residential Tenancies Act, 2018* states:

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.

(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.

31. There are several reasons for my finding that this notice is also invalid. First, the tenant denied that he had received this notice, and no evidence was presented at

the hearing, e.g. date-stamped photographs or videos, showing that it was indeed taped to the tenant's door on that date.

32. And even if the notice was posted on 14 July 2023, as the landlord claims, I further find that he has failed to establish that the unit was uninhabitable on that date. For example, the tenant claimed that the landlord had fixed the windows on 06 or 07 June 2023, and that they were in working order on 14 July 2023. The landlord stated that after the hearing he would submit a receipt from Newfoundland Glass showing that these windows were repaired in July 2023, but that "receipt", although dated 20 July 2023, does not indicate that the quote the landlord had received concerned the rental unit in question. Nor does it indicate whether the work had been carried out and paid for. The tenant also submitted photographic evidence after the hearing, which he states shows that the unit was not uninhabitable and that there are no holes in the walls or broken windows in his unit.
33. Thirdly, I've already determined that there were 2 tenants living at this unit, under 2 separate rental agreements, and I accept the tenant's claim that he was occupying the upstairs portion of the house and that [REDACTED] was in the lower half. He also testified that there was no damage caused to the upstairs portion of the unit, and that all of the damage was caused by [REDACTED] and occurred in his partitioned unit, located downstairs. Of course, the landlord denied that he had partitioned these 2 areas, but, even so, no evidence was presented at the hearing to establish that the damage was caused by the tenant, and not [REDACTED].
34. For these reasons, I find that this second notice is also invalid.

Decision

35. The 2 termination notices submitted by the landlord, dated 30 June and 14 July 2023, are invalid.
36. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

17 August 2023

Date

[REDACTED]
John R. Cook
Residential Tenancies Tribunal