

Residential Tenancies Tribunal

Application 2023-0643-NL

Decision 23-0643-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:15 p.m. on 22-January-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach him by telephone at the start of the hearing. The tenant did not provide a home number, but did provide the number of a support person ([REDACTED]) who was unavailable to receive the call. 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 he has been properly served. The landlord submitted an affidavit (LL#01) with her application stating that the Tenant’s Relations Manager, had served the tenant with notice of the hearing, personally on 01-August-2023. 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 his absence.
5. The tenant had filed a counter claim 2023-0645-NL, he did not attend or submit an affidavit of service, and this claim was dismissed.

Issues before the Tribunal

6. The landlord is seeking
 - Vacant Possession of the rental premises

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions and Section 22: Notice where a tenant's obligation not met, as well as, Residential Tenancies Policy 004.

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

9. The landlord stated that they have a verbal monthly rental agreement with the tenant. He moved into the furnished apartment in June 2021. He pays \$1,650.00 rent each month which is due on the first day. The tenant also paid a security deposit of \$374.00; the landlord is still in possession of the deposit.
10. The landlord said that she and the Tenant's Relations Manager attended the tenant's apartment on 30-June-2023. She explained that all of the units are no smoking and the tenant was smoking in his unit. She described the apartment as being very dirty and there was damages to the furnishings and walls due to smoke; she provided pictures (LL#03) of this damage.
11. On 30-June-2023, while the landlord and Tenant's Relations Manager were at the apartment, they personally served the tenant with a "Landlord's Request for Repairs" form (LL#02). The repairs listed are as follows:
 - Remove nicotine from all walls
 - Remove nicotine from ceilings
 - Remove nicotine for appliances
 - Remove nicotine from blinds
 - Remove nicotine from shelf
12. The notice (LL#02) was signed by the Tenant's Relations Manager and provided the tenant up to 09-July-2023 to complete this work. She provided pictures of the apartment showing the areas of concern (LL#03).
13. On 10-July-2023, both the landlord and the Tenant's Relations Manager returned to the unit. She reports that none of the work had been completed. At that time they personally served the tenant with a "Landlord's Notice to Terminate Early – Cause" form. The reason for termination of the agreement is failure to keep the premises clean and repair damage (Section 22). The notice is signed and dated for 10-July-2023 with a termination date of 18-July-2023.
14. The tenant did not move. The landlord is seeking vacant possession of the rental premises.

Analysis

15. It is the responsibility of the tenant to keep the rental premises clean and repair any damages. In accordance with Section 10 (2), as follows:

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.

16. Should a landlord find that there is a requirement for the tenant to comply with Section 10 (2), they may give the tenant a written request and provide a reasonable time period for the repairs to be completed. As per Section 04-001 of the Residential Tenancies policy manual as follows:

Landlord's Request for Repairs Policy 04-001

Repairs: A landlord who requires a tenant to repair damages to the rental unit, may give the tenant a written request to make the necessary repairs within 3 days (or a reasonable time given the circumstances).

17. If a tenant fails to make the necessary repairs within the required time, the landlord may then give the tenant notice that the tenancy is terminated and that the tenant is required to vacate the rental unit not less than 5 days after the notice has been served. In accordance with Section 22 of the Residential Tenancies Act, 2018, as follows:

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.

18. I accept the landlord's testimony and evidence that the steps required to demand repairs were followed and that all notices met the time frames and service requirements of the Act. The landlord's request for vacant possession succeeds.

Decision

19. The landlord's request for Vacant Possession succeeds.

Summary of Decision

20. The tenant shall vacate the premises immediately.

21. 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.

22. The landlord is granted an Order of Possession.

21-August-2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office