

Residential Tenancies Tribunal

Application 2023-0677-NL

Decision 23-0677-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:50 p.m. on 24-August-2023 via teleconference.
2. The applicant, [REDACTED] represented by [REDACTED], hereinafter referred to as "the landlord", participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing.
4. The landlord's witness, [REDACTED] was called into the hearing.

Preliminary Matters

5. The rental unit is an apartment in an apartment building. The tenant moved in on 1-October-2016. The current landlord took over the building in August 2019. Rent is currently \$600.00 due on the first of each month. A security deposit of \$300.00 was paid in October 2016 and the new landlord confirmed having same in his possession.
6. The landlord stated that she served the tenant with the notice of hearing personally on 12-August-2023 and the tenant disputed the date, saying that he received the document on 13-August-2023 personally. In accordance with the *Residential Tenancies Act, 2018* this is good service.

Issues before the Tribunal

7. The landlord is seeking:
 - An order for vacant possession of the rented premises

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. 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 and Section 10; Statutory Conditions.

Issue # 1: Vacant Possession of the Rental Premises

Relevant Submissions

10. The landlord submitted a copy of a termination notice that was given on a *Landlord's Notice to Terminate Early – Cause* form (LL#1). The notice was issued to the tenant on 26-June-2023 under section 22; Notice where tenant's obligation is not met to vacate on 2-July-2023.

Landlord's Position

11. The landlord stated that she feels that the tenant is not meeting his obligation to keep the premises clean and clutter free. The landlord stated that she is concerned for the safety of other tenants in the building due to the possibility of fire and also she is trying to avoid a rodent infestation problem from starting.
12. The landlord testified that she has given the tenant many opportunities to clean up the unit and she has inspected the unit 5 times but things have not improved much. She stated that she has a witness who works for her and frequents the apartment to check on the progress by the tenant.
13. The landlord stated that the bathroom was recently renovated and it looks like it is 10 years old. She testified that she first met the tenant in November 2021, at which time the unit was very full. The landlord testified that she asked the tenant to clean it up. The landlord testified that she inspected the unit again in November 2022, twice in February 2023 and again in March 2023.
14. The landlord called a witness into the hearing to testify as to the condition of the unit and she testified that on the last inspection dated 26-June-2023, things had improved but she felt like it still was not safe to walk around the kitchen. She referred to the unit as having a slight improvement.

Tenant's Position

15. The tenant testified that he took action to clean his apartment and to declutter the best he could given the minimal amount of space he had to work with. The tenant testified that he moved his furniture and clothing 6 inches away from the heaters as to prevent fire. The tenant agrees that his has a lot of crafts and art in his unit but stated that his apartment is not dirty. He continued to say that the reason that his apartment appears to be cluttery is due to very small rooms and no space to put anything. The tenant states that he is not a hoarder as described by the witness and testified that he made all the changes requested of him on 13-June-2023.

Analysis

16. 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 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. I accept the landlord's testimony that following her inspection on 13-June-2023 that she was concerned for the fire and the safety risks posed to the tenant and other tenants in the apartment building. She was also concerned about the infestation of mice. I asked the landlord if she had revisited the unit on 26-June-2023, which was the deadline for the tenant to clean and declutter. She responded that she and her witness did visit the unit on that date and could see less than a 50% improvement. I asked if the furniture and clothing had been moved away from the heaters and she responded that it had been. I asked if she could move around the kitchen area freely and she responded that it was better but not great.

20. I accept the tenant's testimony that his apartment was not dirty but cluttered with all his stuff due to a lack of space. I also accept his testimony that he moved everything away from the heaters to prevent the risk of a fire, and as the witness confirmed that this had been done on the inspection visit on 26-June-2023, I find that the tenant fulfilled his obligation to make the necessary changes to improve his space to avoid any potential safety risks.

21. The landlord did not submit any documentation or photographs to support her claim that less than 50% of the cleaning and decluttering was complete. As such, I find that the termination notice given on 26-June-2023 to vacate on 2-July-2023 under section 22 of the *Residential Tenancies Act, 2018* is not a valid notice.

Decision

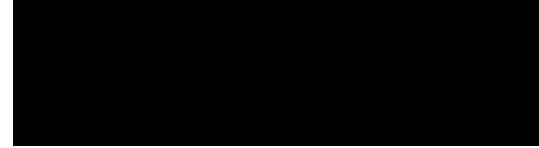
22. I find that the landlord's claim for vacant possession under section 22 of the *Residential Tenancies Act* does not succeed.

Summary of Decision:

23. The landlord does not succeed in her claim for an Order for vacant possession of the rented premises.

September 6, 2023

Date


Pamela Pennell, Adjudicator
Residential Tenancies Office