

Residential Tenancies Tribunal

Application: 2023 No. 704NL

Decision 23-0704-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:01 PM on 29 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 not in attendance.

Issues before the Tribunal

3. The landlord is 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 are sections 10, 22, 24, and 42 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and there was no number available where he could be reached by telephone. 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. With his application, the landlord submitted an affidavit stating that he had sent the application to the tenant, by registered mail, on 09 August 2023. Although the associated tracking history shows that the registered mail was never collected by the tenant, section 42.(6) of the *Residential Tenancies Act, 2018* states that it is nevertheless considered served on the fifth day after mailing—so in this case, on 14 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.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

7. The landlord stated that he had entered into a verbal rental agreement with the tenant about 1 year ago. The agreed rent was set at \$600.00 per month, and the landlord stated that the tenant had paid a security deposit of \$372.00.
8. The landlord testified that he had received a notice from the [REDACTED] during the winter that several windows at the rental unit had been broken out, and because the landlord was responsible for the costs of heating the unit, he claimed that out of a concern for keeping those costs low, he had those windows repaired. He claimed, though, that after these windows were repaired, 3 more are now again broken and have been boarded off. No photographs were submitted into evidence showing this damage.
9. The landlord also complained that the tenant made numerous holes in the walls and the ceiling through the unit. He also complained that there are holes in several doors, and that some doors have been removed from their doorframes and pushed out of a window.
10. The landlord also testified that he has had to go to the property every 3 days or so to clean the premises. He stated that the tenant had been collecting bicycles, bicycle parts and tires, and that there are frequently numerous bags of garbage stored at unit, and he also complained that the tenant is hanging things over the fence.
11. Because of these issues, the landlord stated that he had personally issued the tenant a Landlord's Request for Repairs on 21 June 2023. According to that notice, the tenant was to have the windows repaired, the holes in the walls and ceiling repaired, and he was to remove any garbage at the unit. This work was to be completed by 26 June 2023. The landlord testified that the tenant did not have these repairs completed as required, and that to the date of the hearing, the condition of the rental unit has remained unchanged.

12. Beside the issue of the garbage and the repairs, the landlord also complained that the tenant had been denying him access to the rental unit, even though he had provided him with a notice to enter. He testified that the tenant has changed the locks on the doors, and that he has also barred the main door shut with a 2 x 4. The landlord also reported that someone had tried to enter the property, and the tenant had thrown a coffee cup at that person and had broken his or her elbow. The landlord claimed that this matter is currently being investigated by the police.
13. Because of these issues, the landlord testified that, on 29 June 2023, he had personally issued the tenant a termination notice. That notice was issued under both section 22 of the *Residential Tenancies Act, 2018* (notice where tenant's obligation not met) and section 24 of that Act (notice where tenant contravenes peaceful enjoyment and reasonable privacy). It had an effective termination date of 05 July 2023.
14. The landlord stated that the tenant has not moved out of the unit, as required, and he is seeking an order for vacant possession of the rented premises.

Analysis

15. The landlord has cited 2 sections of the *Residential Tenancies Act, 2018* for which he is giving this termination notice, and those sections concern statutory conditions 2 and 7.(a), as outlined in section 10 of the Act, which read:

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.

...

7. Peaceful Enjoyment and Reasonable Privacy -

(a) The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.

16. Regarding statutory condition 2, 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.

17. It was the landlord's testimony that the tenant had broken 3 windows at the rental property, that he had damaged the walls and ceilings at the rental unit, and that he is not disposing of his garbage, and that debris is accumulating at the property. Although the landlord had presented no evidence at the hearing to corroborate these claims (e.g., photographs, videos, inspection reports, notices from the City, etc.), that testimony was not challenged by the tenant as he had not attended the hearing. Based on that uncontested testimony, then, I find that the tenant had contravened statutory condition 2, and I also find that he had not corrected those issues after receiving notice from the landlord. As such, I find that the landlord was in a position, on 29 June 2023, to issue the tenant a notice under this section of the Act.

18. Regarding the statutory condition concerning peaceful enjoyment, section 24 of the *Residential Tenancies Act, 2018* states:

Notice where tenant contravenes peaceful enjoyment and reasonable privacy

24. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 7(a) set out in subsection 10(1), 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. (2) 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.*

19. Regarding the landlord's contention that the tenant had broken someone's elbow with a coffee cup, I find that that testimony does not establish that the tenant had violated statutory condition 7.(a).
20. Firstly, that testimony was wholly uncorroborated and, as the landlord had not witnessed it himself, it amounted to nothing more than hearsay. Secondly, no evidence was presented at the hearing showing that this individual was a tenant at that property, or that he had a right to enter the tenant's unit. Attempting to repel someone from entering your home, when he has no right to be there, does not seem to me to be unreasonable.
21. Nevertheless, I do find, based on the landlord's uncontested testimony, that the tenant had barred the entry door to the unit, that he had changed the locks to the doors, and that he had refused the landlord and his workers entry into the unit. Each of those actions is a violation of the landlord's rights, as spelled out statutory conditions 5 (entry of residential premises) and 6 (entry doors). Accordingly, I also find that, on 29 June 2023, the landlord was in a position to issue a termination notice under this section of the Act as well.
22. As the termination notice meets all the requirements set out in sections 22 and 24, it is a valid notice.

Decision

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

Issue 2: Hearing Expenses

25. The landlord paid a fee of \$20.00 to file this application. As his claim has been successful, the tenant shall pay this hearing expense.

08 September 2023

Date

[REDACTED]
John R. Cook
Residential Tenancies Tribunal