

Residential Tenancies Tribunal

Application 2023-0752-NL

Decision 23-0752-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 17-October-2023.
2. The applicants, [REDACTED] and [REDACTED], are represented by [REDACTED], hereinafter referred to as "the landlord," he attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants," did not attend.

Preliminary Matters

4. The tenants were not present or represented at the hearing and I was unable to reach them by telephone at the start of the hearing; messages were left at both numbers ([REDACTED] & [REDACTED]). 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 respondents' absence so long as they have been properly served. All parties were served electronically with notice of today's hearing on 13-September-2023. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.
5. The tenants had filed a counter claim 2023-0714-NL, as they didn't attend the hearing, their claim has been dismissed.

Issues before the Tribunal

6. The landlords are seeking
 - Vacant Possession of the rental premises
 - Hearing Expenses \$20.00

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 tenant's obligation not met, as well as, Residential Tenancies Policies 004 and 012.

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

9. The landlord reviewed the written rental agreement (LL#01) submitted into evidence. He said that the tenants have a term agreement from 01-February-2023 – 01-February-2024. They moved in on 22-January-2023. Their rental period is from the 1st day of the month until the last. They pay \$1,200.00 each month on the 1st day. They paid a security deposit of \$600.00 on 22-January-2023 and the landlord is still in possession of the deposit.
10. The landlord submitted a "Landlord's Request for Repairs" form. The form is signed and dated for 03-August-2023, he checked his messages and determined that the notice was sent to both the tenants at 8:49 a.m. on 03-August-2023. The notice demands that the following repairs be completed by 05-August-2023:
 - Fix drain in the bathtub to original condition
 - Remove all items attached from walls and ceiling attached with larger screws
 - Clean up clutter in all bedrooms to meet fire code
 - Housekeeping needs to be maintained
 - Appliances need to be cleaned
 - Toilets need to be cleaned
 - Toilet seat in ensuite needs to be fixed
 - Air exchanger/dehumidifier not being on caused dampness and smell
 - Cut all grass around property
 - Pick up litter on property (seafood shells)
11. The landlord confirms that none of this work was completed within the timeframe. He then served the tenant with a "Landlord's notice to terminate early – cause," the cause cited is "failure to keep the premises and to repair damage (Section 22); the tenant is required to move out no less than 5 days after the notice has been served." The notice is signed and dated for 06-August-2023, he checked his messages and determined that the notice was sent to both the tenants at 2:27 p.m. on 06-August-2023. The termination date is 12-August-2023.
12. The landlord stated that since this time he has attempted to work with the tenants to resolve the issues, however those talks have not been successful. The landlord is seeking an order of vacant possession.

Analysis

13. It is the responsibility of the tenants 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.

14. 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).

As most of the repairs required is general housekeeping, I have determined that the time frame given by the landlord is reasonable.

15. 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.

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

Decision

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

Issue 4: Hearing expenses reimbursed \$20.00

18. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#04) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

19. The tenants shall vacate the premises immediately.
20. The tenants shall reimburse the landlords \$20.00 for his hearing expenses.
21. The tenants shall pay to the landlords any costs charged to the landlords, by the Office of the High Sheriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession.
22. The landlords are granted an Order of Possession.

October 26, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office