

Residential Tenancies Tribunal

Application 2023-0832-NL

Decision 23-0832-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:54 p.m. on 12-October-2023.
2. The applicant, [REDACTED], commonly known as [REDACTED], represented by [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.

Preliminary Matters

4. The landlord submitted an affidavit (LL#01) stating that he served the tenant with notification of today's hearing, by prepaid registered mail ([REDACTED]), on 14-September-2023. The tracking number indicates that this package was picked up on 16-September-2023. The tenant confirms receipt of package as stated by the landlord.

Issues before the Tribunal

5. The landlord is seeking
 - Vacant possession of rental premises

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. 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.

Issue 1: Vacant Possession of the Rental Premises

Landlord's Position

8. The landlord explained the details of the rental agreement. He said that the tenant moved in about 2 years ago. He said that they have a verbal agreement and the tenant is supposed to pay \$1,800.00 the first day of each month for rent including utilities. He said that the tenant paid a security deposit of \$372.00 at the start of his tenancy.
9. The landlord explained that he had an earlier agreement with the tenant and then the tenant's son moved into the house. When the son moved in, the rental agreement became a verbal agreement and rent was \$1,800.00. He said that the tenant's son has moved out but the rent is still \$1,800.00, however the tenant is only paying him \$900.00 each month for rent.
10. The landlord had identified that he has had an ongoing issues with the tenant and they had a previous file (2023-0630-NL), the landlord explained that he had applied for vacant possession at that time, however his application was unsuccessful due to time limits.
11. The landlord decided to ensure success with his current application, he would focus his notices on just one issue, instead of trying to deal with all of the issues.
12. The landlord said that the tenant's front door window is broken out, he provided a picture (LL#02). The landlord said that the City had him replace the original door and that since that time the window in the replacement door was broken out. He said that this happened after the tenant's son was incarcerated this past spring. This happened while this tenant lived there on his own.
13. The landlord said that on 17-August-2023, he posted a "Landlord's request for repairs," on the tenant's door telling him to replace the broken front door window. The notice allowed until 22-August-2023 for the repair to be completed.
14. The landlord states that the window is still not repaired.
15. The landlord then explains that on 23-August-2023 the landlord served the tenant with a "Landlord's notice to terminate early – cause" notice for failure to keep the premises clean and to repair damage. The notice indicates that the tenant is to move out on 30-August-2023. He said that when he served the notice the tenant's dog was barking at him and that the tenant was yelling and cursing at him from the window.
16. The landlord is seeking vacant possession of his property.

Tenant's Position

17. The tenant disputes the terms of the rental agreement as stated by the landlord. The tenant states that he has a written agreement (TT#01) and that he moved in 01-

September-2019. He said that his rent is \$900.00 a month including utilities. The tenant said that his son did move in downstairs, he was violent and that he no longer lives there. The tenant said that his son also paid \$900.00 for rent.

18. The tenant said that the door to the house was in terrible shape and had been kicked in a number of times. He said that the City demanded that the door be replaced, so he purchased a used door and replaced the old door himself.
19. He said that the door belongs to him not the landlord.
20. The tenant explains that the window in the replacement door had a crack and when his large dog would jump against the door, the crack would become larger. He said he was concerned that the glass would fall out, so he removed the glass and put plywood in the window space. He said he prefers not having glass in the window.
21. The tenant disputes that the landlord served him with notification of termination of his rental agreement. He said that on 23-August-2023 he only left the house for 15 minutes to run to the store. When he returned a neighbor told him that the landlord had come by, but did not leave a notice. He said that the first time he saw the termination notice was in the hearing package.

Analysis

22. The landlord and tenant were not able to clearly identify the terms of the rental agreement. I acknowledge that the tenant has provided proof of the original agreement, however this does not identify if there had been changes due to the tenant's son moving in. They both agree that there is an agreement, the tenant pays rent and that the tenant lives in the house. This tribunal will not untangle the exact details of the agreement, as it will not impact the decision. Both parties agree that they are in a landlord tenant relationship, which is important as it determines that the issue is under our jurisdiction.
23. The landlord and tenant also testified to different versions of events concerning the ownership of the door and whether or not the tenant was served with notice of termination on 23-August-2023. In a proceeding under the Residential Tenancies Act, 2018, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.
24. The tenant states that the door to the house is his, however, it is clear from both their testimony that there was a previous door that was so badly damaged that the City asked for the door to be replaced. Whether the tenant purchased the current door or the landlord, the tenant must maintain the property in the same condition as he received it, therefore as the property had a door when the tenant moved in, it should have a door when the tenant leaves. The door is therefore, the property of the homeowner. If the door became damaged due to a negligent or willful act of the tenant or a guest of the tenant, the tenant is responsible to repair or replace the door. As per Section 10.(2) of the Residential Tenancies Act, 2018, 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.*

25. Further to this, the tenant acknowledges that he removed the glass in the current door and the landlord's photo evidence supports that the door is still in a state of disrepair. The landlord's termination notice citing Section 22 of the *Residential Tenancies Act, 2018* requires that the landlord first provide the tenant with a reasonable amount of time to make repairs, 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.

26. The landlord's notice for a request for repairs provided the tenant with 4 days to complete this repair, which is a reasonable amount of time. The tenant did not make the repair.
27. The "Landlord's notice to terminate early – cause" notice for failure to keep the premises clean and to repair damage, meets the timelines and requirements of the *Act*, however the two parties dispute the service of the document on 23-August-2023. The tenant testified that on the day in question he only left the house for 15 minutes, and neighbor told him that the landlord was there and didn't leave a notice. The landlord testified that he had a previous decision, where timelines weren't met and that he decided to make his termination simpler by focusing on one issue. The timelines and notices follow this statement and I accept, based on the balance of probabilities, that the landlord's testimony is more than likely the way that the events unfolded. I therefore accept that the landlord served the tenant with the notice to terminate on 23-August-2023.
28. The landlord's notice meets the requirements of the *Act* and is a valid notice the tenant should have vacated the premises on 30-August-2023.

Decision

29. The landlord's claim for vacant possession succeeds.

Issue 2: Hearing expenses reimbursed \$20.00

30. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#05) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

31. The landlord's claim for an order for vacant possession succeeds.

The tenant shall:

- Vacate the premises immediately.
- The tenant shall pay to the landlords 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.
- The tenant shall reimburse the landlord \$20.00 for her hearing expenses.

October 13, 2023

Date



Jacqueline Williams, Adjudicator
Residential Tenancies Office