

Residential Tenancies Tribunal

Application 2023-0834-NL

Decision 23-0834-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:46 p.m. on 05-October-2023.
2. The applicants, [REDACTED] and [REDACTED], represented by [REDACTED], hereinafter referred to as "the landlord" she attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1 and tenant2" attended by teleconference.

Preliminary Matters

4. The tenants had filed an application 2023-0808-NL however they did not serve the landlord with notification of the hearing. These files will be separated and the tenants' hearing will be rescheduled so that they can provide the landlords with notice of the hearing.
5. The landlord submitted an affidavit (LL#01) stating that the tenants were personally served with notice of today's hearing 17-September-2023. Tenant1 confirmed this service as stated.

Issues before the Tribunal

6. The landlords are 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 21: Notice where premises uninhabitable.

Issue 1: Vacant Possession of the Rental Premises

Landlord's Position

9. The landlord reviewed the terms of the written monthly agreement held with the tenants. The tenants took occupancy on 07-September-2022 and paid \$575.00 per month for rent. The landlord said that they agreed that the tenants could make their payments every second Tuesday to coincide with their income. She said that they paid a security deposit of \$280.00 on 07-September-2023.
10. In March the landlord said that the tenants had an issue with the toilet. She explains that the house has two washrooms and the tenants' rental agreement states that they are not to use the downstairs toilet and that they will only have use of the functional upstairs toilet. She said when they told her there were with issues with the only functional toilet she hired a contractor and he used liquid lightening and a snake on the toilet. This did not fix the issue.
11. She explained that the contractor found out that there was no septic system hooked up to this toilet and that instead of replacing the old tank with a new tank, she was facing a much more expensive job of putting in a septic system.
12. She said that financially she is not able to install a new system at this time. The contractor gave her a letter stating that the house, as it doesn't have a functional toilet, is uninhabitable.
13. At that time she felt she had to give the tenants a notice to terminate the rental agreement. She submitted the notice, it is on a landlord's notice to terminate early – cause form. It cites premises uninhabitable as the reason. The notice is signed and dated for 31-July-2023 with a termination date of 31-August-2023. She said she sent the tenants a message on Facebook Messenger a few days before the written notice and on 31-July-2023 she delivered the official notice in person.
14. The landlord is seeking an Order of Vacant Possession.

Tenants' Position

15. Tenant1 confirmed the details of the rental agreement as stated by the landlord.
16. Both tenants declare that they are unable to find alternative housing in the area and that they don't want to change their children's school or move.
17. Tenant1 explained that they were okay not using the washroom that doesn't function, and that since March they have had no functioning toilet. She said that all the rest of the plumbing works fine. She said her mother lives next door and they all just use the washroom over there.

18. The tenants both wish to stay in the home until they can find another place. Tenant1 explained that they receive income support and are not in a position to even pay for storage of their belongings.
19. Both tenants wish to remain in the house until they can secure alternate housing. Tenant1 said that if they have to move she is hoping that they can use the house for storage of their belongings.

Analysis

20. The landlord is seeking vacant possession due to the premises being uninhabitable. The question at hand is, can the rental premises be considered uninhabitable? Residential Tenancies policy 07-006 is as follows:

Residential properties are required to comply with the Occupancy and Maintenance Regulations under the Urban and Rural Planning Act. The enforcement authority for this regulation is most often identified as the municipal government. Where a landlord's compliance with laws regarding housing, health or safety conditions are questionable, **the tenant** contacts the responsible authority (ie. municipal building inspector or Dept. of Health). **If the unit is declared uninhabitable by a regulatory authority, the tenant may give notice** to the landlord that the rental agreement is terminated and the tenant is vacating the rental premises immediately.

21. The tenants have not shown that a regulatory authority was contacted in relation to the issues with the plumbing in the rental. They are not interested in moving and would not seek to have the house deemed uninhabitable. It is not under the scope of this tribunal to deem the property uninhabitable due to a violation of the Occupancy and Maintenance Regulations. It is important to note that the landlord can only give notice for premises uninhabitable if the tenants caused the problem making the premises unfit for habitation. The landlord was made aware of the issues with the plumbing and it is apparent from both parties that the issues are not the fault of the tenants.
22. As the tenants are not at fault for the issues with the plumbing, the landlord is not permitted to give notice for premises uninhabitable, in accordance with Section 21, of the Residential Tenancies Act, 2018, as follows:

Notice where premises uninhabitable

21. (1) Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes statutory condition 1 set out in subsection 10(1), the tenant may give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises effective immediately.

(2) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where an action of, or a failure to act by, a tenant makes a residential premises unfit for habitation, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises effective immediately.

23. The landlord has determined that they would not be correcting this issue for financial reasons. The landlord's obligation, in accordance with Section 10 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:

1. Obligation of the Landlord -

- (a) The Landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.**
- (b) Paragraph (a) applies regardless of whether, when the landlord and tenant entered into the rental agreement, the tenant had knowledge of a state of non-repair, unfitness for habitation or contravention of a law respecting health, safety or housing in the residential premises.**

24. In this situation, I understand that the cost of repair is too much for the landlords at this time, however, the responsibility for this repair is that of the landlord. Should the landlord be unable to complete this repair, then it is their responsibility to find alternative accommodations for the tenants.
25. As the landlord may not give a notice of termination for premises uninhabitable, unless the tenants caused the issue, I find that the termination notice is not valid and the application for a vacant possession order fails.

Decision

26. The termination notice is not valid and the landlord's claim for vacant possession fails.

October 11, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office