

Residential Tenancies Tribunal

Application 2023-0877-NL

Decision 23-0877-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 1:48 PM on 24 October 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", attended the hearing.
3. The respondents, [REDACTED], hereinafter referred to as "tenant 1", attended the hearing. [REDACTED], "tenant 2", did not attend the hearing. Tenant 1 also had a witness present in the hearing, [REDACTED], who offered testimony.
4. The details of the claims were presented as a written monthly rental agreement with rent set at \$1,200.00, due on the 1st of each month. There was a security deposit collected on this tenancy in the amount of \$900.00 on 9 December 2022, and still in possession of the landlord. The tenant has resided at [REDACTED] since 9 December 2022, along with his father. The landlord issued a termination notice on 13 September 2023 to terminate the tenancy on 25 September 2023 under section 19 and section 20 of the *Residential Tenancies Act, 2018* a Landlord's Notice to Terminate Early- Cause (**Exhibit L # 1**). Tenant 2 was served via electronic mail at [REDACTED] an Application for Dispute Resolution on 20 September 2023 (**Exhibit L # 2**).
5. 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.

Preliminary Matters

6. The landlord amended her application at the hearing and was seeking an Order for Vacant Possession regarding Notice where material term of agreement contravened.

7. The landlord did not call any witnesses.
8. Tenant 1 called a witness, [REDACTED], a representative with the [REDACTED]
[REDACTED]
9. Tenant 2 was not present at the hearing. This Tribunal's policies concerning notice requirements and hearing attendance have been defined in Policy 07-001 which indicates, "*If the landlord issues a termination notice to one tenant in a joint tenancy, it is effective for all. The landlord should ensure that all the tenants are named on the termination notice*". The landlord submitted a Landlord's Notice to Terminate Early-Cause (**Exhibit L # 1**) which clearly identifies both tenant 1 and tenant 2.

Issues before the Tribunal

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

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*
12. Also relevant and considered in this case is S. 19, 20, 34 and 35 of the *Residential Tenancies Act, 2018*, and Policy 07-001 of the Landlord Tenancies Program.

Issue 1: Vacant Possession of Rented Premises

Landlord Position

13. The landlord submitted Landlord's Notice to Terminate Early-Cause, under sections 19 and 20, in relation to failure to pay rent and Breach of material term (**Exhibit L # 1**). The notice was signed and dated on 13 September 2023 and requested the tenants to move out on 25 September 2023.
14. The landlord offered testimony that the tenants had paid the rental arrears for September 2023 and October 2023 and on the date of the hearing (24 October 2023) did not have any outstanding rental arrears.
15. The landlord offered evidence the conditions of the rental agreement of [REDACTED] (**Exhibit L # 3**) signed by tenant 2 on 8 December 2022 which includes, "Due to the reason that some terms are not mentioned in the rental agreement. This form will be used as an addendum to add several terms: Any kind of smoking (tobacco or marijuana, electronic cigarette) is not allowed at the residence or property at [REDACTED]" and "Tenants are required to clean their room before vacating the premises".

16. The landlord alleged the tenants were breaching the material term of the rental agreement and specifically, the use of marijuana and tobacco. In addition, the landlord provided a written statement from a contractor, who had attended the property of [REDACTED] [REDACTED] for repairs (painting) outside of the property and to conduct a yearly inspection of the apartment on 16 August 2023. During this visit, the contractor noticed a smell of marijuana present when the door was opened (**Exhibit L # 4**).
17. The landlord also offered evidence (i.e. pictures) from the yearly inspection of the rental (**Exhibit L # 5**) which show a cigarette butt in the rental address. Also the landlord offered testimony of concerns with the upkeep of the cleaning of [REDACTED].
18. The landlord testified, "I wishes to rely on the evidence I submitted prior to the hearing".

Tenant Position

19. Tenant 1 stated he was notified by his brother that his father, tenant 2, was issued the Application for Dispute Resolution and wished to take part in the hearing. In addition, tenant 1 confirmed he was fully aware of the notice to terminate issued by the landlord requesting he and his father to be out of the rental by 25 September 2023.
20. Tenant 1 offered testimony that rental arrears were paid in full and there was no outstanding rent on the date of the hearing (24 October 2023). Tenant 1 stated while he fully understood that landlord was seeking possession of the property in relation to an alleged breach of agreement, he did not agree to the allegations of smoking within the unit.
21. Tenant 1 confirmed he experienced health concerns which required daily visits from the health authority. Tenant 1 also stated tenant 2, also experienced health concerns and at the time the landlord's notice to terminate was issued, his father was hospitalized.
22. Tenant 1 called a witness. The witness confirmed that tenant 2 had been hospitalized for a month and that tenant 1 also experienced a health condition which involves daily in-person visits with Eastern Health Authority representatives at [REDACTED] [REDACTED]. The witness suggested that when tenant 2 was hospitalized, tenant 1 found this emotionally challenging. In addition, the witness expressed concerns with the potential of the tenants having to secure other accommodations due to the lack of availability in the community.

Analysis

23. The landlord amended her application as the tenants had paid all rental arrears and at the time of the hearing (24 October 2023), did not hold any outstanding balance on rent.
24. The landlord amended her initial application and wished to obtain an order of vacant possession in relation to a breach of material term of rental agreement, contrary to section 20 of the *Residential Tenancies Act, 2018*.

25. The landlord offered evidence of alleged use of smoking (both tobacco and marijuana) by the tenants (**Exhibit L # 4 & L # 5**), along with testimony about concerns with the upkeep and cleanliness of the rental property.
26. Regarding cleanliness of the rental property, the landlord offered evidence whereby the expectation was that, "Tenants are required to clean their room before vacating the premises" (**Exhibit L # 3**). The issue regarding breach of the rental agreement due to lack of cleaning, is that the tenants remain in the unit and have not vacated the premises.
27. When examining the evidence offered by the landlord about the alleged breach of smoking in the property, I do accept the evidence. I do not find, however, an adequate notice by the landlord that the rental agreement is terminated.
28. On examination of the termination notice and submitted into evidence, I find the notice served on 13 September 2023 with a termination date of 25 September 2023 (**Exhibit L # 1**).
29. The landlord offered testimony and evidence indicating the rental agreement at [REDACTED] [REDACTED], is a written monthly agreement. **Section 20** of the *Residential Tenancies Act, 2018*, identify the technical requirements of the termination notice.

Section 20 (3)

Where the tenant gives a landlord notice under subsection (1) or the landlord gives a tenant notice under subsection (2) that a rental agreement is terminated, the notice shall be given:

(b) not less than one month before the end of a rental period where the residential premises is (i) rented from month to month

30. The landlord issued by the landlord is not valid. The date of issue was 13 September 2023, with a request for the tenants to be out by 25 September 2023.
31. I find the termination notice invalid and the landlord's claim fails.

Decision

32. The landlord's claim for an order for vacant possession fails.

Issue 2: Hearing Expense- \$20.00

33. The landlord submitted a receipt for hearing expenses (**Exhibit L # 6**).

Decision

34. The landlord's claim for hearing expenses does not succeed in the amount of **\$20.00**.

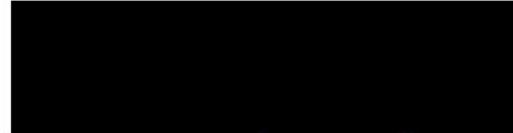
Summary of Decision

35. The landlord's claim for an order for vacant possession does not succeed.

36. The landlord's claim for hearing expenses does not succeed.

7 November 2023

Date



Michael J. Reddy
Residential Tenancies Office