

Residential Tenancies Tribunal

Application 2023-0922-NL

Decision 23-0922-NL

Michael Reddy
Adjudicator

Introduction

1. Hearing was called at 9:02 a.m. on 26-October-2023.
2. The applicant, [REDACTED], commonly known as [REDACTED], 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 attend by teleconference. The tenants called a witness, [REDACTED], with [REDACTED] hereinafter referred to as “the witness”.

Preliminary Matters

4. The landlord submitted an affidavit (**Exhibit L # 1**) stating that he served both tenants with notification of today’s hearing, by prepaid registered mail ([REDACTED] and [REDACTED]) on 13 October 2023. The tracking numbers indicates the packages were delivered on 16 October 2023. The tenants confirm receipt of package as stated by the landlord.

Issues before the Tribunal

5. The landlord is seeking:
 - a. Vacant Possession of the rental premises
 - b. Hearing Expenses \$20.00

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, as well as, Residential Tenancies Policies 004 and 012.

Issue 1: Vacant Possession of the Rental Premises

Landlord Position

8. The landlord reviewed the oral rental agreement. He said that the tenants have a monthly agreement which started on 06 May 2021. The tenants remain in the rental property at [REDACTED] on the date of the hearing (26 October 2023). Their rental period is from the 1st day of the month until the last. Each tenant pays \$750.00 each month on the 1st day. They paid a security deposit of \$744.00 in October 2021 and the landlord is still in possession of the deposit.
9. The landlord submitted a "Landlord's Request for Repairs" form. The form is signed and dated for 15 September 2023 (**Exhibit L # 2**). The notice demands that the following repairs be completed on 22 September 2023:
- a. Clean interior of property and remove garbage
 - b. Repair/replace broken interior door and lock
 - c. Repair holes in the interior walls and doors
 - d. Repair kitchen cabinet
 - e. Remove all unauthorized pets from the property
10. The landlord confirms that none of this work was completed within the timeframe. He then served the tenants 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 2 October 2023. The termination date is 26 September 2023 (**Exhibit L # 3**).
11. The landlord offered evidence of pictures of the rental property (**Exhibit L # 4**) which he alleges the tenants damaged the rental property.
12. The landlord stated during the hearing he did have additional pictures that he could offer to support his application which were pictures of the rental prior to the tenants taking occupancy. In response to this, the landlord was asked if he wished to postpone the hearing to ensure all appropriate evidence was available. He declined this and wished to continue with the hearing.
13. The landlord stated the rental property was, "a bedsitting room. Each tenant has one room and it's a two-bedroom apartment". The landlord alleged "the apartment is dirty, dirty, dirty all over. They destroyed between nine and eleven doors during their tenancy".
14. The landlord is seeking an order of vacant possession.

Tenants Position

15. The tenants both offered testimony that the damage for the rental on first floor at [REDACTED], were present throughout their tenancy. Further to this, the tenants claimed there was a deterioration of the property during their tenancy which was exacerbated by water damage, mildew, and rodents in the property.
16. The tenants also offered testimony that the damage to one of the doors was not damage they caused, rather the tenants in the upstairs rental. They specified this door was in a common area of [REDACTED].
17. The witness described having a professional relationship with both tenants and summarized her involvement with both individuals as advocating for them. The witness offered testimony of a situation when she attended the tenants' rental unit in June 2023 to, "drop off a food hamper" at which time she observed significant damage both inside and outside of the rental unit. The witness suggested this resulted in the [REDACTED] becoming involved for inspection purposes at [REDACTED]. The witness could not offer any insight as to how the damages resulted, however did allege significant water damage at the location.

Analysis

18. 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.*

19. 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).

20. 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.

21. I accept the landlord's testimony and evidence that there is damage at [REDACTED]. There are questions, however, which require further insight. Firstly, the landlord, tenants and witness all acknowledge that these damages are present. What is not clear is when those damages occurred, how and by whom? The tenants both maintained that the damages were present when they took ownership of the property. As well, damage was of a door in a common area of [REDACTED] which has a shared area of the upstairs tenants of the property. The witness offered testimony that she observed water damages to the property, along with damage to walls and doors.

Furthermore, I question if the tenants could complete the repairs as requested by the landlord.

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 account of events are more likely than not to have happened.

22. As indicated in paragraph 12 herein, the landlord stated that he did have additional physical evidence that he could provide to the tribunal to support his application. He first stated that he was having computer problems which prevented him accessing this information. When asked if he had pictures before the alleged damages he could offer, he then suggested he was out of province and unable to access this information. I asked the applicant if he wished to postpone the hearing which he declined the opportunity. The applicant summarized, "I didn't offer enough pictures". As based on the balance of probabilities, I find the landlord's request for vacant possession fails.

Decision

23. The landlord's request for Vacant Possession fails.

Issue 2: Hearing expenses reimbursed \$20.00

24. The landlord submitted the receipt for \$20.00 for the cost of the hearing (**Exhibit L # 5**). As the landlord's claim for vacant possession does not succeed, his request for hearing expenses fails.

Summary of Decision

25. The landlord's claim for vacant possession does not succeed.
26. The landlord's claim for hearing expense does not succeed.

8 November 2023
Date


Residential Tenancies Office