

Residential Tenancies Tribunal

Application 2023-No.0968-NL

Decision 23-0968-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:00 p.m. on 22-November-2023.
2. The applicant, [REDACTED] represented by [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants” did not attend.
4. The homeowner [REDACTED] did not attend, she provided an authorized representative form (LL#01), naming [REDACTED] as her representative.

Preliminary Matters

5. 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 ([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. The landlord submitted an affidavit (LL#02) with their application stating that they had served the tenants with notice of the hearing, by prepaid registered mail on 30-October-2023. The landlord included the tracking numbers ([REDACTED] [REDACTED] & [REDACTED]), which show that the packages were received and signed for on 06-November-2023. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
6. The landlord amended their application to increase rent owed from \$900.00 to \$1,800.00 to reflect the current amount of rent due.

Issues before the Tribunal

7. The landlord is seeking:

- Rent \$1,800.00
- Late fees \$75.00
- Vacant possession of rental premises
- Hearing Expenses \$49.76

Legislation and Policy

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

9. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Section 15: Fee for failure to pay rent, and Section 19: Notice where failure to pay rent, Section 22: Notice where tenant's obligation not met and Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy.

Issue 1: Rent \$1,800.00

Relevant Submissions

10. The landlord submitted a rental agreement (LL#03) with the application. They entered a written monthly agreement with the tenants on 01-June-2016. The tenants pay \$900.00 a month for a single dwelling home. The rental period is from the 1st day of the month until the last day; rent is due the 1st day of each month. The landlord said that the tenants did not pay a security deposit.

11. The landlord submitted a rent ledger (LL#04), she explained that the rent payments are usually not on time. The ledger is as follows:

Rent ledger
2023-0968-NL

Date	Action	Amount	total
1-Jun-23	Rent due	900.00	900.00
2-Jun-23	payment	-600.00	300.00
19-Jun-23	payment	-300.00	0.00
1-Jul-23	Rent due	900.00	900.00
5-Jul-23	payment	-600.00	300.00
16-Jul-23	payment	-300.00	0.00
1-Aug-23	Rent due	900.00	900.00
2-Aug-23	payment	-300.00	600.00
1-Sep-23	Rent due	900.00	1500.00
1-Sep-23	payment	-600.00	900.00
15-Sep-23	payment	-300.00	600.00

1-Oct-23	Rent due	900.00	1500.00
5-Oct-23		payment	-600.00
1-Nov-23	Rent due	900.00	1800.00

12. The landlord is seeking full compensation for rent owed.

Analysis

13. Non-payment of rent is a violation of the rental agreement (LL#03). I accept the landlord's testimony and evidence that the tenant did not pay rent totaling \$1,800.00.

14. The tenant shall pay the landlord the rent owed totaling \$1,800.00.

Decision

15. The landlord's claim for rent succeeds in the amount of \$1,800.00.

Issue 2: Late fees \$75.00

Relevant Submissions

16. The landlord has proven, paragraph 11, that the tenant has been in rent arrears during the entire period covered in the submitted rent ledger. The landlord's claim is for \$75.00, the late fees are applied as follows: On 02-June-2023 the tenants are in rent arrears, on that date they are fined \$5.00. The tenants pay the rent in full on 18-June-2023, however the late fees are not paid, therefore the tenant is still in arrears. The late fees reach the maximum amount allowed in accordance with the minister on 06-July-2023 by accumulating at a rate of \$2.00 a day after the first day (03-June-2023 – 06-July-2023).

Analysis

17. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

18. I find that the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

19. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 3: Vacant Possession of the Rental Premises

Relevant Submissions

20. The landlord submitted a termination notice (LL#05). It is on a "landlord's notice to terminate early – cause" form. The landlord has indicated three separate reasons for the termination (i) Failure to Pay Rent, (ii) Failure to keep the premises clean and to repair damage, and (iii) Interference with peaceful enjoyment and reasonable privacy. The notice is signed and dated for 03-October-2023, with a termination date of 09-October-2023.
21. The landlord said that she personally served the notice to the tenants on 03-October-2023.

Section 19 – Failure to pay rent

22. The landlord provided a rent ledger (LL#04) as well as text messages (LL#16) from the male tenant declaring that they would not be paying rent.
23. The ledger (paragraph 11) shows that rent has been paid inconsistently and has been in arrears since 02-August-2023.
24. The landlord is seeking vacant possession for failure to pay rent.

Section 22 – Failure to keep the premises clean and to repair damage.

25. The landlord supplied a number of pictures showing that the home is in a state of disrepair. Picture (LL#06) shows a picture of a missing thermostat. Picture (LL#07) shows the same wall with the thermostat still in place, taken prior to occupancy. She said that she spoke with the male tenant and inquired what happened to the thermostat and she said he told her he didn't know. She finds this difficult to believe because as the picture shows the thermostat is gone, and the wires have been connected by use of a Mirette.

26. The landlord also provided a picture of the ceiling (LL#08), she draws attention to a hole in the ceiling as well as the smoke stains. She acknowledges that the rental agreement (LL#03) doesn't state non-smoking, but she relays that the tenants are not supposed to smoke in the home.
27. The landlord submitted a picture of the carpet (LL#09), she said that the carpet is really frayed in this one spot, she accepts that the tenants have been living there awhile and acknowledges that this could potentially be wear and tear.
28. The landlord also submitted a picture of the siding (LL#10) showing a hole with cracking around it.
29. Lastly, she submits a picture of the outside door (LL#11) she draws attention to the doorknob. She explains that you can notice the marks from the original exterior door handle. She said that that the exterior handle has been removed and replaced with this interior doorknob. She furthers that the homeowner does not have a key to this knob and therefore doesn't have access to the house.
30. The landlord confirmed that the tenants were not given a notice to repair.
31. She is seeking vacant possession for failure to keep the premises clean and repair damage.

Section 24: Interference with peaceful enjoyment and reasonable privacy

32. The landlord states that there have been ongoing issues with the tenants. She said that there has been violence and illegal activity. The homeowner is receiving complaints from the neighboring businesses and those businesses are threatening legal action against the homeowner if she doesn't have the tenants evicted.
33. The landlord provided two videos (LL#12 & LL#13). The videos are time stamped for 02-June-2023. In the first video a male can be seen throwing a rock at a passing vehicle. In the second video two people can be viewed storming into and out of the house. There is also the sound of fighting coming from inside the house. The landlord said that a neighboring business provided them the video. She provided a copy of a google map (LL#14) showing the area and that the rental is off the parking lot of the business lot.
34. The landlord also provided the court docket (LL#15) for 10-November-2023 naming the male tenant on charges of robbery, disguised with intent and possession of a weapon for a dangerous purpose.
35. The landlord said that due to the ongoing issues with the tenants and their propensity for violence the homeowner hired their company to deal with the termination of this rental agreement. The landlord explained that the homeowner has become increasingly nervous to go to the home and she is struggling with the stress caused by the ongoing complaints from the neighboring business.

Analysis

36. As there were multiple reasons cited for termination of the rental agreement, each reasoning will be considered independently.

Section 19 – Failure to pay rent

37. The notice cited under Section 19, of the *Residential Tenancies Act, 2018*, which states:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

.....

(b) where the residential premises is

(i) rented from month to month,

(ii) rented for a fixed term, or

(iii) a site for a mobile home, and

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

.....

(4) 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.

.....

38. The tenant was in rent arrears in excess of the 5 days when the notice was served. On the date of termination, the tenant was still in arrears. The termination notice however did not provide the necessary 10 days' notice and therefore does not meet the requirements of the Act and is not valid.

39. The termination for non-payment of rent fails.

Section 22 – Failure to keep the premises clean and to repair damage.

40. The landlord has provided evidence to support that there have been damages to the property that the tenant is responsible to repair.

41. 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.***

42. Should a landlord find that there is a requirement for the tenant to comply with Section 10 (2), they shall 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).

43. 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.

44. The landlord's testimony (paragraph 31) confirms that the steps required to demand repairs were not followed. The notice to repair is an integral step in the issuance of a

termination notice for cause due to failure to repair and keep the premises clean. Therefore, this notice does not meet the requirements of the Act. I find that the landlord's request for vacant possession for failure to repair fails.

Section 24: Interference with peaceful enjoyment and reasonable privacy

45. The landlord has also cited interference with peaceful enjoyment and reasonable privacy.
46. In accordance with statutory condition 7.(a), set out in section 10.(1) of the *Residential Tenancies Act, 2018*:

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:

....

7. Peaceful Enjoyment and Reasonable Privacy -

(a) The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.

(b) The landlord shall not unreasonably interfere with the tenant's reasonable privacy and peaceful enjoyment of the residential premises, a common area or the property of which they form a part.

47. According to Residential Tenancies Policy 007-05 Peaceful Enjoyment, interference of peaceful enjoyment is defined as: "an ongoing disturbance or activity, outside of normal everyday living, caused by the landlord or the tenant". Peaceful enjoyment may include, but is not limited to the following: (i) excessive noise; (ii) aggressive or obnoxious behaviour; or (iii) threats and harassment.
48. The landlord has shown that there has been issues with aggressive behavior and violence on the property. The submission indicating criminal charges of a violent nature was not considered as at the time of the hearing there was no finding of guilt. She has also provided testimony that the neighbors are being negatively impacted and that they are complaining to the homeowner. However, Section 24 determines that the impact must be on the landlord or other tenants in the residential premises.
49. The landlord's evidence doesn't show how the behaviors of the tenants have impacted the homeowner/landlord. The focus of the testimony was instead on the neighboring businesses and their subsequent complaints. Although it is unfortunate that these neighbors are impacted, their concerns are not considered cause under Section 24 of the Act.
50. The landlord has not met the burden of proof showing that the landlord's peaceful enjoyment and reasonable privacy has been impacted by the tenants' behaviors and therefore I find that the landlord's request for vacant possession for interference with peaceful enjoyment and reasonable privacy fails.

Decision

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

Issue 5: Hearing expenses reimbursed \$20.00

52. The landlord submitted the receipts for \$20.00 for the cost of the hearing (LL#18) and \$14.88 for both parties to be served by registered mail (LL#17) totaling \$29.76. Pursuant to policy 12.01, the landlord is entitled to reimbursement of those costs totaling \$49.76 from the tenant.

Summary of Decision

53. The tenant shall:

- Pay the landlord \$1,924.76 as follows:
 - Rent \$1,800.00
 - Late fees 75.00
 - Hearing expenses 49.76
 - Total \$1,924.76

The landlord's claim for an order of Vacant Possession fails.

December 1, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office