

Residential Tenancies Tribunal

Application 2023-0979-NL

Decision 23-0979-NL

Michael Reddy
Adjudicator

Introduction

1. Hearing was called at 2:00 PM on 21 November 2023.
2. The applicant, [REDACTED], commonly referred to as [REDACTED], was represented by [REDACTED] - **Affirmed**, hereinafter referred to as "the landlord," attended by teleconference. The landlord did not call any witnesses.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant," did not attend - **Absent and Not Represented**.
4. The details of the claim were presented as a written monthly rental agreement with rent set at \$263.00 per month and due on the 1st of each month. There was no security deposit collected on this tenancy and the tenant has resided at [REDACTED] [REDACTED], since 8 November 2016. The tenant remains in the rental on the day of the hearing.
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 her account of events are more likely than not to have happened.

Preliminary Matters

6. The landlord submitted an affidavit (**Exhibit L # 1**) stating that [REDACTED] served the tenant with notification of today's hearing, by prepaid registered mail ([REDACTED]) on 26 October 2023. The tracking numbers indicates the package was available for pick up on 26 October 2023.
7. The tenant, [REDACTED], was not present or represented at the hearing. The Tribunal's policies concerning notice requirements and hearing attendance has been adopted from the *Rules of the Supreme Court*, 1986.

a. Rule 29.05(2)(a) states a respondent 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 respondent's absence so long as she/she has been properly served.

The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on 26 October 2023 by serving the application for dispute resolution document to the tenant via registered mail. The tenant has had 25 days to provide a response.

I attempted to contact the respondent at 1:47 PM on the date of the hearing and left a telephone message (████████) for the respondent encouraging her to attend the hearing by 2:00 PM on 21 November 2023.

As the tenant was properly served in accordance with the *Residential Tenancies Act*, 2018, with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded with the hearing.

Issues before the Tribunal

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

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
10. 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 07-002 and rule 29 of *Rules of the Supreme Court, 2018*.

Issue 1: Vacant Possession of the Rental Premises

Landlord Position

8. The landlord reviewed the written rental agreement (**Exhibit L # 2**). She said that the tenant has a monthly agreement which started on 08 November 2016 and the tenant remain in the rental property at ██████████ on the date of the hearing (21 November 2023). The rental period is from the 1st day of the month until the last. The pays \$263.00 each month on the 1st day. There was no security deposit collected on this tenancy.
9. The landlord offered testimony that ██████████ had attempted to rectify concerns with the cleanliness and potential safety and fire safety risks of ██████████ on 11 May 2023 (**Exhibit L # 3**). This correspondence requested cleanup of the rental of the rental unit.

10. The landlord also provided a subsequent request for the tenant on 21 July 2023 to "maintain the property to an acceptable standard of cleanliness. Provide [REDACTED] pictures of each room in the unit as proof that improvement to the unit's cleanliness has been addressed as per letter issued on May 11, 2023. Pictures can be sent by e-mail or dropped off. Please action the following no later than August 11, 2023. If the above items are not complete by August 11, 2023, it will result in an eviction notice as this is a violation of your lease agreement with [REDACTED]. Please note that [REDACTED] wishes to work with you to maintain your tenancy and encourages you to take the required actions to do so" (**Exhibit L # 4**).
11. The landlord stated the tenant did not supply the landlord with pictures of each room in the rental to confirm the requested cleanup was completed by the tenant.
12. The landlord offered testimony that other tenants in [REDACTED] rentals had expressed to the [REDACTED] on-going and continuous concerns with the cleanliness of the tenant's property. As well, she expressed on-going safety and fire safety risks for the tenant at [REDACTED], as well as other attached rental properties as the rental premises was described by the landlord as being, "rowhouses".
13. The landlord stated that it was common for [REDACTED] staff to regularly attend and enter all rental properties operated by the Corporation.
14. The landlord offered evidence of pictures dated 6 September 2023 within the rental unit at [REDACTED] (**Exhibit L # 5**).
15. The landlord offered evidence dated 8 September 2023 which identify concerns with the tenant's alleged non-compliance with her lease agreement and upkeep of her rental unit (**Exhibit L # 6**).
16. The landlord offered evidence dated 6 October 2023, addressed to the tenant, requesting for the tenant to "deliver up possession" of [REDACTED] by 13 October 2023 in relation to section 22 of the Act (**Exhibit L # 7**).
17. The landlord is seeking an order of vacant possession.

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. Worth further consideration is Section 07-002 of the *Residential Tenancies* policy manual which states, "A tenant is responsible to repair damages and to keep the premises clean (s. 10(1)2.) where damages are caused by the tenant or someone the tenant permits on the premises, the tenant is responsible".

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 non-compliance by the tenant with upkeep of the cleanliness of [REDACTED]. The landlord had offered into evidence correspondence on, multiple occasions, the expectations of the tenant to maintain a clean premises, concerns with damages, along with fire safety risks. Specifically, correspondences were issued on:

- 11 May 2023
- 21 July 2023
-
- 8 September 2023

22. Following those correspondence, the tenant was issued the notice to vacate the property on 6 October 2023 by 13 October 2023 (**Exhibit L #7**). Section 24 requires that when a premises is rented for month to month, the landlord can 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. On examination of the termination notice issued and submitted into evidence, I find the notice was served on 6 October 2023 with a termination date of 13 October 2023. I find the notice has been served and the date the tenant is required to move out, the termination notice is in full compliance with the requirements of section 22 (2) and 34 identify the technical requirements of the termination notice. On examination of the termination notice, I find that all these criteria have been met.

23. The landlord issued the notice to terminate in a means consistent with Section 35 (2) of the *Residential Tenancies Act*. As stated in Section 35(2), “A notice or other document under this Act other than an application under section 42 shall be served by (c) posting

it in a conspicuous place on the tenant's resident premises". The [REDACTED] staff member posted the termination notice of the doorway of [REDACTED] (Exhibit L # 8). I find this means of service is in full compliance with the requirements of section 35(2) of the Act.

24. It is for these reasons, I find the landlord's request for vacant possession succeeds.

Decision

25. The landlord's request for Vacant Possession succeeds.

Issue 2: Hearing expenses reimbursed \$20.00

26. The landlord submitted the receipt for \$20.00 for the cost of the hearing (Exhibit L # 9). As the landlord's claim for vacant possession does succeed, her request for hearing expenses succeeds. While the landlord had sent the tenant via registered mail, the Application for Dispute Resolution, she did not provide receipts for registered mail.

Decision

27. The landlord's request for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

28. The landlord's is entitled to the following:

- An order for vacant possession of the rented premises; &
- Tenant shall pay to the landlord 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

06 December 2023

Date



Residential Tenancies Office