

Residential Tenancies Tribunal

Application 2023-1009-NL

Decision 23-1009-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:16 a.m. on 18-December-2023.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant" did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach her by telephone [REDACTED] at the start of the hearing, however a message was left. 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 respondent's absence so long as she has been properly served. Both parties attended on a previous date, and they were served notice of today's hearing by our office on 13-December-2023. As the parties were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

Issues before the Tribunal

5. The landlord is seeking:
 - Vacant possession of rental premises
 - Damages \$4,650.00
 - Hearing expenses reimbursed \$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 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy.

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

8. The landlord stated she has a written agreement with the tenant, she said that the tenant moved in the spring of 2021 and the initial agreement may have been for a term, however it is currently a monthly rental agreement. She explained that she is unable to find her copy of the rental agreement. She said the tenant pays \$800.00 rent a month which does not include utilities. Her rental period is from the first day of the month until the last. Rent is due in full on the first day of the month. She is unable to recall if there was a security deposit paid.
9. The landlord submitted a termination notice (LL#02) served to the tenant. The notice is a Section 24 notice (LL#02) on a Landlord's Notice to Terminate Early – Cause. It is signed and dated for 16-October-2023 with a termination date of 22-October-2023. The landlord said that this notice was served to the tenant electronically on 16-October-2023 at 1:20 p.m. and she provided proof of that service (LL#03).
10. The landlord said that there have been ongoing issues with the tenant. The tenant lives in a basement apartment and the landlord's parents live upstairs. The landlord has received complaints from the upstairs renters about the recent issues with the tenant.
11. The landlord stated that on 22-September-2023 at 5:25 p.m. the tenant sent her a text (LL#04) stating that her car had been stolen at 6:45 a.m. that morning and requested the doorbell video for the police file. She said that the tenant initially stated in the text (LL#04) that someone had taken her spare key from the apartment and then later went on to say that the individual and a few others got in her car to smoke and then took off with the car. The landlord explained that this is the second time the tenant has stated that the car was stolen.
12. On 12-Oct-2023, the upstairs renters woke up to excessive noise coming from the downstairs apartment around 11:00 p.m. They called the police [REDACTED] The upstairs renters said that there sounded like a lot of damages were occurring. The basement window (which is in the rec room of the upstairs renters' section of the house) was broken out. The tenant told the landlord in a text (LL#05) that the individual was a guest in her home and that she would pay for the repair of the window. The landlord explained that she had the window repaired the following day, she provided the tenant the receipt (LL#05) however she was never compensated for that cost.
13. On 13-October-2023 the landlord gave the tenant a notice to enter (LL#06) saying she would be entering on 14-October-2023. She said she gave this notice because she was concerned about the damages to the unit. When she entered, she discovered that there were no damages to the tenant's unit. The only damage was to the window of the other unit.

14. On 16-October-2023 at 12:30 p.m. the upstairs renters heard excessive noise coming from the tenant's apartment. Once again, the police were called [REDACTED]. The landlord's father entered the apartment with the police and provided pictures (LL#07).
15. The pictures (LL#07) show that the blinds were destroyed, there was blue paint everywhere, a bedroom door was damaged, there were holes in the living room wall, the hallway wall and the kitchen walls, and the fridge was dented and damaged. The landlord suggested that the tenant charge the man who did the damages. She also requested the tenant's insurance information for the repairs. She said that she never received the insurance information.
16. It was after this incident that the landlord gave the tenant notice of termination (LL#02) as stated in paragraph 9.
17. On 21-October-2023 at 12:30 a.m. the landlord received a complaint from the upstairs renters that there was excessive noise and that the tenant's door was kicked in. The police were called [REDACTED]. More damages resulted from this incident.
18. On 22-October-2023 the landlord gave a notice to enter (LL#09) the next day, to assess the damages from the day before. The landlord submitted pictures (LL#10) detailing additional damages: there is damage to the kitchen cupboard door, the door frame is broken from the door being kicked in and the door is dented, more holes in the walls, holes in the kitchen walls where the landlord said the tenant claimed someone was throwing knives at her and they went into the wall, and an interior door is broken.
19. On 21-November-2023 the landlord received a complaint that there was a smell of marijuana coming from the tenant's apartment. The landlord submitted the text message with the tenant (LL#11). The tenant acknowledges that she was smoking hash in the bathroom with the fan on but claimed she didn't realize that there was a no smoking clause in her rental agreement.
20. The landlord submitted a sworn statement (LL#12) from the upstairs renter in his sworn statement he confirms the details of the complaints testified by the landlord. He adds that there have been ongoing issues of noise over the past six months, the tenant is coming and going all hours of the night, her car has no exhaust, and she has left her dog unattended for days at a time. He said that his and his wife's peaceful enjoyment of their home has been taken from them. He states that they have grandchildren that sometimes stay over, and they feel the home is no longer safe for the children.
21. The landlord states that the tenant's behavior is interfering with the peaceful enjoyment of the other tenants in the house, and she is seeking vacant possession of the apartment.

Analysis

22. Statutory condition 7.(a), set out in section 10.(1) of the *Residential Tenancies Act, 2018* states:

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.

23. According to Residential Tenancies Policy 7-05 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.
24. I accept the testimony and evidence of the landlord that the tenant's behavior is disruptive. It is reasonable to believe that the late-night noise, the criminal activity of her guests and police presence would interfere with the other tenants' enjoyment of their rental property.
25. I agree with the landlord and find that the tenant's behavior is negatively impacting the other tenants in the house. The landlord's claim for vacant possession succeeds. The tenant should have vacated the property by 22-October-2023.

Decision

26. The landlord's claim for vacant possession succeeds.

Issue 2: Compensation for damages \$4,650.00

Relevant Submissions

27. The landlord submitted a damage ledger (LL#13) as follows:

Description	Compensation
Exterior Door	\$800.00
Exterior door install	500.00
Window blinds (3 separate windows)	100.00
Plaster/paint entire apartment (holes in every wall)	2,000.00
Replace interior bedroom door (hole)	200.00
Trim around door	150.00

Cleaning	200.00
Fridge (punch marks throughout)	500.00
Smashed window (already repaired)	200.00
• Total	\$4,500.00

28. The landlord's testimony in Issue 1, details the damages done to the apartment and provides pictures of the same (LL#07 & LL#10). She said that the tenant did clean up the blue paint. She also attempted to plaster some of the holes. She explains that during the last inspection on 22-October-2023 the damages listed in her ledger were still requiring repair. She believes there is further damage to the home since that time.

29. The landlord stated that the apartment was renovated 10 years ago and painted throughout just before the tenant moved in 2 years ago. To date the only repair completed is the window in the upstairs renters' apartment that was broken out by a guest of the tenant. The landlord provided a receipt (LL#14) for the cost of the glass \$124.83, and she is seeking 3 hours personal time for the window to be installed by her father (the upstairs renter).

Analysis

30. Section 10 of the *Residential Tenancies Act, 2018* states:

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.

Accordingly, in any damage claim, the applicant is required to show:

- That the damage exists;
- That the respondent is responsible for the damage, through a willful or negligent act;
- The value to repair or replace the damaged item(s)

In accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential Tenancies policy 9-6.

31. I find that the landlord has shown through her evidence that the window was broken and repaired. This repair cost \$124.83 for supplies + 3 hours @ the approved rate of (minimum wage + \$8.00 totaling) \$23.00 x 3 = \$69.00. I find that the tenant shall compensate the landlord for \$124.83 + \$69.00 = \$193.83.

32. 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 must establish that his/her account of events are more likely than not to have happened.
33. I accept that the damages have occurred and that those damages were at the hands of the tenant or a guest of hers. However, as the tenant has not moved from the apartment, and the landlord has not already carried out the remaining repairs, there is no proof that those repairs will remain after the tenant vacates the premises. The landlord's own evidence supports that the tenant cleaned the blue paint and had attempted to plaster some of the holes in the walls. As there is no verifiable way to determine whether the tenant will repair these damages I cannot with any certainty demand that the tenant pay for a loss that has not been established. The landlord's claim for all damages, except the window, fails.

Decision

34. The landlord's claim damages succeeds in the amount of \$193.83.

Issue 3: Hearing expenses reimbursed \$20.00

35. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#15) and pursuant to policy 12.01, as her claim has been successful is entitled to reimbursement of that cost from the tenant.

Summary of Decision

36. The landlord's claim for an order for vacant possession succeeds.

The tenant shall:

- Vacate the premises immediately.
- The tenant shall pay to the landlords 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.
- The tenant shall reimburse the landlord \$213.83 as follows:
 - Damage to window \$193.83
 - Hearing expenses 20.00
 - Total \$213.83

December 22, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office