

Residential Tenancies Tribunal

Application 2023-1059-NL

Decision 23-1059-NL

Michael Reddy
Adjudicator

Introduction

1. Hearing was called at 9:15 AM on 7 December 2023.
2. The applicant, [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 verbal monthly rental agreement with rent set at \$750.00 per month, including cable and internet and due on the 1st of each month. There was no security deposit collected on this tenancy and the tenant has resided at [REDACTED] for approximately 35 years. The tenant was in the rental unit prior to the landlord taking ownership of [REDACTED]. 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 his account of events are more likely than not to have happened.

Preliminary Matters

6. The landlord submitted an affidavit (**Exhibit L # 1**) stating he personally served the tenant with notification of today's hearing, at [REDACTED] on 10 November 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 10 November 2023 by serving the application for dispute resolution document at approximately 2:54 PM the tenant by placing this notice on the door of [REDACTED]. The tenant has had 27 days to provide a response.

I attempted to contact the respondent at 9:06 AM on the date of the hearing and left a telephone message ([REDACTED]) for the respondent, encouraging her to attend the hearing by 9:15 AM on 7 December 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 rule 29 of *Rules of the Supreme Court, 2018*.

Issue 1: Vacant Possession of the Rental Premises

Landlord Position

11. The landlord testified that there have been ongoing requests for the tenant to maintain cleanliness of access to the rental unit and to ensure easy access to the electrical panel. The electrical panel is located in the common area of the rental unit. The tenant had requested repairs to be done in the common area during summer of 2022 (**Exhibit L #2**). In September 2022, the landlord offered evidence that the tenant was asked to ensure the common area was clear and he could access the electrical panel for the property (**Exhibit L # 3**). The landlord during the hearing, described the common area of the rental and inside the rental unit as "a fire trap".
12. The landlord testified on 21 April 2023, he had spoken via text message with the tenant about concerns with ease of access to the electrical panel in the common area of the rental unit, concerns with accessibility to the rental unit, and that the tenant had changed the lock of [REDACTED] and had failed to provide the landlord a new key (**Exhibit L # 4**).

13. The landlord stated the tenant has been within the rental unit for approximately 35 years and he had made attempts to complete renovations in the common area and within the rental during summer 2023, however the plumber and construction worker were unable to access the apartment and common areas to complete the required work due to the number of personal items of the tenant.
14. At the time of the hearing (7 December 2023), the landlord suggested there continues to be concerns of excess materials being in the entry way to the common area, having clear access to the electrical panel, the potential of a fire hazard due to excess materials being inside and outside of the rental unit, and a motor vehicle being in the driveway that was not in driving condition. The landlord stated he did not own any of the materials blocking his access to the electrical panel or to the entry of the rental property. The landlord issued the tenant a request for repairs to be completed on the rental unit on 12 October 2023 by 27 October 2023 (**Exhibit L # 5**). Concerns outlined in this evidence include:
 - Remove all items from common porch area, this is an exit and access to electrical panel
 - Remove all not furniture items from floor of rental, it is impossible to get around the unit
 - Remove exercise machine and other items from garden
 - Move car to one side of 2 car driveway, you only have one parking spot, not 2
 - Provide key to lock you changed without my permission
15. The landlord stated because of lack of completion of the requested repairs of the rental unit, he issued the tenant a Landlord's Notice to Terminate Early- Cause under section 22, of the *Residential Tenancies Act*, 2018 on 6 November 2023 with a request for the tenant to be out of the rental by 13 November 2023 (**Exhibit L # 6**).
16. The landlord offered picture evidence on the date of the hearing of the common area and entry way to the rental (**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. Testimony and evidence were presented by the landlord to suggest that the tenant was informed of concerns with the common area and entry way of the rental not being accessible, expectations of the tenant, and a request for cleanup of the rental property in April 2023 (**Exhibit L # 4**). As well, the landlord provided the tenant on 12 October 2023, a request for repairs to be completed by 27 October 2023 (**Exhibit L # 5**).

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. This is 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. The landlord has provided evidence of the tenant's failure to maintain a clear entry way and common area of the rental unit as presented in pictures from the date of the hearing (**Exhibit L # 7**), which reveals that access to the rental unit entry way and electrical panel continues to be compromised.

22. Also of consideration is the changing of the locks to the rental by the tenant. Section 10(6) is applicable to this issue before this Tribunal. Section 10(6) speaks to the issue of Entry Doors. The landlord's evidence identifies the issue that the tenant had changed the lock of the entry door. As defined in Section 10(6):

Entry Doors- *Except by mutual consent, neither the landlord nor the tenant shall, during the use or occupancy of the residential premises by the tenant, alter a lock or locking system on a door that gives entry to the residential premises.*

The landlord denied there was consent for the tenant to alter the lock of the rental door.

23. The tenant was issued the notice to vacate the property on 6 November 2023 by 13 November 2023 (**Exhibit L # 6**). Section 22 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 November 2023 with a termination date of 13 November 2023. I find the termination notice has been served correctly and is in full compliance with the requirements of section 22 (2) and 34 of the Act.

24. 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 landlord stated the notice was placed on the door of the rental property. I find this means of service is in full compliance with the requirements of section 35(2) of the Act.

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

Decision

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

Issue 2: Hearing expenses reimbursed \$20.00

27. The landlord submitted the receipt for \$20.00 for the cost of the hearing (**Exhibit L # 8**). As the landlord's claim for vacant possession does succeed, the tenant is responsible for the \$20.00 hearing expense.

Decision

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

Summary of Decision

29. The tenant shall vacate the premises immediately
30. The landlord shall be granted an order of vacant possession of the rental premises
31. The tenant shall pay the landlord \$20.00 for hearing expenses, and,
32. The 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

14 December 2023

Date



Michael Reddy
Residential Tenancies Office