

Residential Tenancies Tribunal

Application 2023-1168-NL

Decision 23-1168-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 17-January-2023.
2. The applicant, [REDACTED] hereinafter referred to as the landlord, appeared via teleconference.
3. The respondent, [REDACTED] hereinafter referred to as the tenant, did not appear.

Preliminary Matters

4. The tenant was not present or represented at the hearing. I attempted to call them and spoke briefly to an individual who was unable or unwilling to identify themselves, communicating only in indecipherable grunts. 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 they have been properly served. The landlord submitted an affidavit (LL#3) with their application stating that they had served the tenant with notice of the hearing personally on 28-December-2023. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issues before the Tribunal

5. Should the landlord be granted an order for vacant possession?

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* (the Act).

7. Also considered and referred to in this decision are sections 22 and 34 of the *Act*, as follows:

Notice where tenant contravenes peaceful enjoyment and reasonable privacy

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.

Requirements for notices

34. A notice under this Act shall

- (a) be in writing in the form prescribed by the minister;
- (b) contain the name and address of the recipient;
- (c) identify the residential premises for which the notice is given; and
- (d) state the section of this Act under which the notice is given.

Issue 1: Vacant Possession of the Rental Premises

8. In order to succeed in a claim for vacant possession, a landlord must have issued a valid termination notice. A termination notice is only valid if it does not conflict with the *Act*. In the case of a notice under s. 22, the notice specifically must comply with the general notice provisions under s. 34 and the requirements listed in s. 22(3).
9. The landlord submitted a termination notice (LL#1). It is in writing in the form prescribed by the Minister. It contains the name and address of the tenant. It identifies the residential premises it regards. It specifies that it is issued under s. 22 of the *Act*. It is therefore compliant with section 34.
10. The termination notice is signed by the landlord. It states a move out date. It was served by both taping it to the tenant's window and by placing it in the tenant's mailbox, in accordance with s. 35(2)(c) and (d) of the *Act*. It is therefore in compliance with s. 22(3).

11. The notice was issued on 1-December-2023. It gives a move out date of 8-December-2023. This provides more than 5 clear days as required under s. 24(1).
12. Under s. 22(2), a termination notice under this section may only be issued after a landlord issues a landlord's request for repairs under s. 22(1). The landlord submitted a copy of such a document (LL#2), which was issued on 16-November-2023. It requests that the tenant repair three items (a broken oven door, a broken bedroom door, and the front door deadbolt, which had been removed) on or before 30-November-2023. Pictures of the items needing repairs were provided (LL#4). The landlord testified that this notice was served on the tenant personally.
13. In this case the landlord testified that repairs were not effected by 30-November-2023 or by the date of the hearing. The only remaining issue is whether or not the tenant was in violation of statutory condition 2 under s. 10(1) of the Act, as follows:

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.
14. The landlord testified that the tenant had provided multiple inconsistent stories explaining the damage to the door. He additionally testified that she was non-responsive and/or evasive when questioned about other damages. Considering the evidence in its totality, including the pictures provided, I am satisfied on a balance of probabilities that the damage was caused by a wilful or negligent act of the tenant or a person whom the tenant permitted on the premises.

Decision

15. The termination notice dated 1-December-2023 is valid.
16. The tenancy terminated on 8-December-2023.
17. Insofar as the tenant is still residing at the premises, she is doing so illegally.

Summary of Decision

18. The tenant shall vacate the premises immediately.
19. The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sherriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession.
20. The landlord is granted an order of possession.

24-January-2024
Date


Seren Cahill
Residential Tenancies Office