

Residential Tenancies Tribunal

Application 2023-1188-NL

Decision 23-1188-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 29-January-2024.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord", participated in the hearing.
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 him by telephone at the start of the hearing. 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 he has been properly served. The landlord submitted an affidavit with her application stating that she had served the tenant with the notice of hearing via pre-paid registered mail [REDACTED] on 13-January-2024 (LL#1). The landlord submitted proof of service (LL#2) and Canada Post tracking services indicates that the respondent did not retrieve the mail. In accordance with the Residential Tenancies Act, 2018 registered mail is considered served 5 days after it has been sent. 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 his absence.
5. There is a written month to month rental agreement which commenced on 1-August-2020. Rent is currently \$1100.00 due on the first of each month. The rental agreement states that a security deposit was paid, however the applicant confirmed that it was never received.

Issues before the Tribunal

6. The landlord is seeking:
 - An order for vacant possession of the rented premises

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the Residential Tenancies Act, 2018.
8. Also, relevant and considered in this decision are the following sections of the Residential Tenancies Act, 2018: Section 22; Notice where tenant's obligation is not met and Section 10; Statutory Conditions.

Issue # 1: Vacant Possession of the Rental Premises

Relevant Submissions

9. The landlord submitted a copy of a termination notice that was given on a *Landlord's Notice to Terminate Early – Cause* form (LL#3). The notice was issued to the tenant on 13-December-2023 under Section 21; Premises uninhabitable, Section 22; Notice where tenant's obligation is not met and Section 24; Interference with peaceful enjoyment and reasonable privacy. The termination date was listed as 19-December-2023.

Landlord's Position

10. The landlord testified that she gave the tenant a termination notice under 3 different sections of the Act (Sections 21, 22 and 24) as she felt that each section was applicable in some manner to the current situation with her tenant.
11. With regard to Section 21, the landlord stated that the unit is filthy dirty to the point where in her opinion, it is unsanitary for a person to reside there. The landlord submitted videos to show the condition of the unit (LL#4).
12. With regard to Section 22, the landlord testified that she noticed in the summer /fall when mowing the lawn that garbage had become a problem around the exterior of the premises. The landlord stated that she gave the tenant several verbal notices to clean up around the property and to remove a sofa that had been on the lawn for months. The landlord stated that she decided to conduct inspections of the interior of the unit and while dropping off a written notice to enter the premises on 22-October-2023, she could see from the entrance hallway area that the walls and light switches were discolored due to nicotine and the entrance way/ hallway area was dirty and had damages to the walls. The landlord testified that the smell of smoke stuck to her clothing in the few minutes that she was standing in the entrance hallway. The landlord testified that she followed up immediately that day with a Landlord's Request for Repairs form requesting that the tenant complete the following repairs by 29-October-2023:

- 1) *Clean apartment / entrance way/hallway.*
- 2) *Stop smoking in Apartment /hallway/entrance way.*
- 3) *Clean walls, surfaces and nicotine buildup through apartment.*
- 4) *Repair any damages throughout apartment.*

13. The landlord testified that she entered the premises several times after the 29-October-2023 and stated that she was shocked to see the condition of the unit and offered to assist the tenant to get the unit cleaned. The landlord testified that she purchased cleaners for the tenant, but he did not clean the unit and the condition of the unit did not improve but rather deteriorated. The landlord submitted into evidence a copy of 2 separate videos taken on 12-December and 14-December.
14. With regard to Section 24, the landlord stated that the tenant interfered with the peaceful enjoyment and reasonable privacy of 2 other tenants to the point whereby they both vacated the unit in the summer of 2023. The landlord stated that they were scared and intimidated by the respondent and terminated their tenancies. The landlord stated she is not prepared to move new tenants into the unit until the respondent vacates.

Analysis

15. The relevant subsections of Section 22 of the *Residential Tenancies Act, 2018* state:

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 specific date not less than 5 days after the notice has been served.

16. The relevant subsections of Section 10 of the *Residential Tenancies Act, 2018* state:

Statutory Conditions

10. (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 a person whom the tenant permits on the residential premises.

17. With regards to Section 22 as stated above, I accept the landlord's testimony that her initial visit to the unit on 22-October-23 revealed to her that the tenant was not fulfilling his obligation to keep the premises clean. The landlord stated that her view from the entrance hallway showed that the unit was rather dirty and there were signs of nicotine on the walls and doors and the entrance hallway had holes in the walls. I accept that the landlord was in her right to give the tenant a request for repairs form based on her observations from the entrance hallway of the unit. Further inspections by the landlord showed that no attempts were made by the tenant to clean the unit within the time given, 29-October-2023. The landlord testified that she visited the unit several times after that date to try to assist the tenant to get the unit cleaned to the point where it could be sanitary to reside in. I accept the landlord's testimony that the condition of the unit did not improve but rather deteriorated. The landlord submitted videos taken in December 2023 to support her claim (LL#4). In viewing the videos, it is evident that the tenant has not fulfilled his obligation as

a tenant to keep the premises clean, and as such I find that the tenant has contravened Section 10-2 of the Act as stated above.

18. The termination notice was given on 13-December-2023 under Section 22; Notice where tenants obligation is not met to vacate the premises on 19-December-2023. The notice meets the requirements of the Act to move out not less than 5 days after the notice has been served. I find that the termination notice is a valid notice.
19. I find that the tenant should have vacated the premises by 19-December-2023.

Decision

20. The landlord's claim for vacant possession of the rented premises succeeds.
21. As vacant possession has been awarded under Section 22 of the Act, Sections 21 and 24 will not be analyzed for the purpose of this decision.

Summary of Decision:

22. The tenant shall vacate the property immediately.
23. 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.
24. The landlord will be awarded an Order of Possession.

February 2, 2024

Date

Pamela Pennell, Adjudicator
Residential Tenancies Office