

Residential Tenancies Tribunal

Application 2023-1226-NL

Decision 2023-1226-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:02 AM on 1 February 2024 via teleconference.
2. The applicants, [REDACTED] hereinafter referred to as "landlord1", and [REDACTED] hereinafter referred to as "landlord2", attended the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", attended the hearing and called a witness, [REDACTED] hereinafter referred to as "the tenant witness".
4. The details of the claims were presented as a signed monthly rental agreement with rent set at \$650.00, due on the 1st of each month (**Exhibit L # 1**). There was a security deposit collected on this tenancy, which the landlord remains in possession, in the amount of \$300.00. The tenant has resided at [REDACTED] NL since 15 March 2023. The landlord issued a termination notice on 26 September 2023 to terminate the tenancy on 2 October 2023 under section 24 of the *Residential Tenancies Act, 2018* (**Exhibit L # 2**). The tenant was served in person on 20 January 2024 an Application for Dispute Resolution (**Exhibit L #3**).
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/her account of events are more likely than not to have happened.

Preliminary Matters

6. The landlords amended their application during the hearing and are only seeking to have the premises vacated. They offered testimony and did not call any witnesses. The landlords did provide a signed Witness Affidavit from another tenant in the rental address with their application.

7. The tenant did call a witness who attended. The witness assisted the tenant with verbalizing her testimony.

Issues before the Tribunal

8. The landlord is seeking the following:

- An order for eviction and possession of property; and
- 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 case is S. 24, 34 and 35 of the *Residential Tenancies Act*, 2018.

Issue 1: Order for eviction/ possession of property

Landlords position

11. Landlord2 testified the tenant moved into the rental unit on 15 March 2023 and there is a written monthly agreement in place. Landlord2 stated the tenant remains in the rental of [REDACTED] on the day of the hearing (1 February 2024). Landlord1 testified that the Application for Dispute Resolution was served personally to the tenant by [REDACTED] who he described as a tenant in the rental unit. Landlord1 stated the tenant has caused damages which contributed to impacting on other tenants of the seven-unit apartment building.
12. Landlord1 stated he had observed damages to the interior pane of the exterior living room window from the actions of the tenant which resulted in the tenant being issued a Landlord's Request for Repairs on 26 September 2023 with a request for those repairs to be completed by 30 September 2023 (**Exhibit L # 4**). Landlord2 issued the tenant this Request for Repairs by placing it on the door of the tenant's apartment. Landlord1 suggested the repairs to the window were never completed.
13. Landlord2 testified on 26 September 2023, she issued the tenant a Landlord Notice to Terminate Early- Cause with a request for the tenant to be out by 2 October 2023 (**Exhibit L # 2**) by placing this document on the door of the entry way of the tenant's apartment.
14. Landlord1 stated he did not feel the rental unit was an appropriate residence for the tenant and testified that the tenant's actions were impacting on the peaceful enjoyment of themselves and other tenants in the building. He stated that the apartment below the

tenant's building experienced flooding which resulted in the other tenant having to get rid of damaged personal belongings. He attributed this flooding to the negligent actions of the respondent. As well, landlord1 stated because of concerns with the conditions of their apartment building following the floodings, he testified he and his wife are experiencing on-going stress. With their application package, the landlords provided a handwritten and signed Witness Affidavit dated 23 January 2024 (**Exhibit L # 5**) by the tenant of the rental unit below the tenant. [REDACTED] within that signed Witness Affidavit states, "I reside with my two boys in the apartment below the tenant upstairs, [REDACTED] I have experienced three times with flood I had furniture ruined, gaming spoiled, Christmas this was spoiled and the carpet and flooring spoiled."

Tenant position

15. The tenant did not dispute that she had been issued the Landlord's Request for Repairs and the Landlord's Notice to Terminate Early- Cause.
16. The tenant confirmed she did damage the living room window by accident.
17. The witness for the tenant did not dispute the testimony of the landlords that the tenant received a Landlords Request for Repairs and a Landlord Notice to Terminate Early- Cause. The witness testified the tenant wished to reimburse the landlords for the damage to the living room window and stated the damaged window does need to be repaired. The tenant or the witness did not offer any testimony into the issues with flooding for the apartment under Unit # 7.

Analysis

18. Statutory conditions 2 and 7(a), set out in section 10(1) of the *Residential Tenancies Act*, 2018 states:

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 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 willful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

...

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 of the property of which they form a part.

Section 24, Notice where tenant contravenes peaceful enjoyment and reasonable privacy states:

24. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 7(a) set out in subsection 10(1), 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.

(2) 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

19. I accept the testimony of the landlords that the tenant's alleged actions are having a negative impact on the peaceful enjoyment of the landlords and other tenants. The landlords presented their on-going concerns with the state of repair required for the building due to flooding caused by the other tenant in the building below [REDACTED] and they continued to express how they are experiencing stress due to the impact of the respondent is having on other tenants and their rental property.
20. The validity of the termination notice is determined by its compliance with the notice requirements identified in Section 24 and 34 as well as the service requirements identified in section 35. Landlord2 testified the Landlord Request for Repairs and the Landlord Notice to Terminate Early notices were personally served to the tenant.
21. 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 notice issued and submitted into evidence (**Exhibit L # 2**), I find the notice was served on 26 September 2023 with a termination date of 2 October 2023. The notice issued is in clear compliance with the requirements of section of section 24. Sections 24(2) and 34 identify the technical requirements of the termination notice. On examination, I find that all the criteria have been met.

Decision

22. The landlord's claim for an order for vacant possession does succeed. The landlord is further awarded cost associated with the certification and enforcement of the Possession Order by the High Sheriff of NL.

Issue 2: Hearing Expense \$20.00

23. The landlord submitted a receipt for the hearing expense for the Application for Dispute Resolution (**Exhibit L # 6**) in the amount of \$20.00.

Analysis

24. I find the landlords entitled to the **\$20.00** application fee reimbursement as her application succeeds.

Decision

25. The landlord's claim for hearing expense succeeds.

Summary of Decision

26. The landlord is entitled to the following:

- An order for vacant possession of the rented premises,
- The tenant shall also 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.
- The tenant shall also pay the landlord \$20.00 hearing expense.

16 February 2024

Date

Michael J. Reddy
Residential Tenancies Office