

Residential Tenancies Tribunal

Application 2024-0009-NL

Decision 2024-0009-NL

Michael Reddy
Adjudicator

Introduction

1. Hearing was called at 1:46 PM on 8 March 2024.
2. The applicant, [REDACTED], represented by [REDACTED] [REDACTED], 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 the hearing. The arbitrator called [REDACTED] at [REDACTED] to determine if he would be attending; however, the call was disconnected, and the arbitrator was unable to reconnect. The respondent's authorized representative, [REDACTED], hereinafter referred to as "the tenant's Authorized Representative," attended by teleconference. A completed tenant's authorized representative from was provided (Exhibit T # 1). He advised that [REDACTED] wished to attend but was ill and struggling to participate without the assistance of his community supports from [REDACTED] who were unavailable due to a snowstorm. The tenant's authorized representative noted that he intended to call witnesses [REDACTED] supports from [REDACTED] however they were unavailable due to inclement weather.
4. 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

5. The landlord submitted an affidavit (Exhibit L # 1) stating the tenant was personally served with notification of the hearing originally scheduled for 29 February 2024, at [REDACTED] [REDACTED] on 12 February 2024 at approximately 1:17 PM. The tenant's Authorized Representative confirmed receipt of the Application for Dispute Resolution and did not dispute this claim by the landlord. The hearing was subsequently rescheduled to 8 March 2024, and the parties were provided notice of rescheduling by the Residential Tenancies Division (Exhibit L #2).

6. The landlord did not amend his application during the hearing.
7. The tenant's Authorized Representative requested to have the hearing re-scheduled, given the circumstances as outlined in paragraph 3. It is noted that this hearing had previously been postponed. As this hearing is held via teleconference and the tenant had been properly served, and as further delay in the proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.

Issues before the Tribunal

8. The landlord is seeking:
 - a. Vacant Possession of the rental premises.

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 and 21 and *Policy 07-006 Premises Uninhabitable of the Residential Tenancies Program*.

Issue 1: Vacant Possession of the Rental Premises

Landlord Position

11. The landlord reviewed the written rental agreement (Exhibit L # 3). He said that the tenant has a monthly agreement which started in July 2022 and the tenant remains in the rental property on the date of the hearing. The rental period is from the 1st day of the month until the last, with rent set at \$2,500.00 each month which included heat, electricity, internet, cable and telephone services. There was a security deposit collected in July 2022 in the amount of \$1,250.00.
12. The landlord issued the tenant a Notice to Terminate Early- Cause (Exhibit L # 6) on 19 December 2023 under section 21 (2)(3) of the *Residential Tenancies Act, 2018* with a request for the tenant to vacate the premises on 19 December 2023.
13. The landlord testified during the hearing that the tenant was involved with community organizations to assist with independent living and when the support worker changed in the fall 2023, it appeared the tenant did not respond positively to this change. The landlord stated that following this change of support worker, he began noticing the rental was not being kept up. He noted that every time he had visited the unit, prior to his last visit in November or December, there was significant clean up required in the unit as there was garbage, rotten foods, rodent feces, clothing, and other debris strewn all across the unit. The landlord stated he had to have pest control treatment conducted at the duplex (Exhibit L # 4) in March 2023, which he attributed to trash and food scraps left in and around the rental unit by the tenant.
14. The landlord testified that the last time he attended the rental property at [REDACTED] [REDACTED] was in December 2023 to evaluate the condition of the premises. There was a pit-bull in the house that tried to attack him and there were a

number of individuals in the house. For safety reasons he left the house immediately and he removed himself, so he was unable to take pictures.

15. The landlord also noted that he was notified by workers of [REDACTED] that there were concerns with the water line inside the rental property. The landlord testified after being notified of the need for repairs, he posted a 24-hour notice to enter the rental property on the doorway of the rental on 6 March 2024 (Exhibit L # 9) to fix the water line. He also provided a text message conversation between himself and [REDACTED], [REDACTED] confirming the 24-hour notice request. He noted that when he showed up, unlocked the door and tried to open the door it could not be opened; the curtain to the window in the door was closed, but he assumes the door was barricaded as it could not be opened and the tenant had barricaded the door in the past. He provided a video of his attempt to open the front door of the rental (Exhibit L # 11) demonstrating his inability to gain access to the premises.
16. Along with his application, the landlord provided evidence of communications he had with the [REDACTED] Municipal Enforcement Department regarding garbage outside of the rental property (Exhibit L # 7 & Exhibit L # 8). The dates of those communications were 24 January 2024 and 7 March 2024 respectively.
17. Upon arrival to enter the rental, he observed a number of bags of garbage outside of the rental unit, as well as the front door of the duplex being, "barricaded". The landlord stated he was unable to open the door of the rental with his key. Along with his application, the landlord provided pictures from the outside of rental of bags of garbage (Exhibit L # 10). The time stamp on those pictures included one taken on 1 February 2024 and three pictures taken on 7 March 2024.
18. The landlord further testified that the windows to the house have been boarded up as they have been destroyed by the tenant, and the doors has been kicked in multiple times ; and provided a photo in support of his allegation, time and date stamped at 25 October 2023 at 2:32:30pm (Exhibit L # 5).

Tenant Position

19. The tenant's authorized representative advised that while unable to personally provide direct testimony as he was never in the rental property, he has maintained on-going contact with the tenant and representatives from [REDACTED] and could provide information that had been relayed to him by the tenant.
20. That the tenant was issued a termination notice for cause citing uninhabitability is not in dispute. However, it was noted that the tenant had been having ongoing issues with the repair and maintenance of the rental unit since moving in and intimated that much of the disrepair can be attributed to the landlords inaction. The authorized representative advised that the tenant has expressed concerns that the landlord has not been maintaining the rental property in appropriate condition during his occupancy. He noted that the tenant disputes the landlords allegation that he had broken the windows in the rental unit; that the big living room window had been reported broken for several months, the landlord has been aware, but has made no repairs.
21. The authorized representative stated the tenant did experience health concerns which required involvement from community organizations, and that after the landlord had informed the tenant about cleaning up inside the duplex, along with the help of workers from Thrive, the tenant bagged up the debris from inside and placed the items outside in garbage bags for pick up. He further noted that, according to the tenant, no garbage

bin(s) had ever been provided. Additionally, while the landlord stated that he 'treated the rat infestation', no documentation has been provided as evidence.

22. The authorized representative noted that the relationship between the landlord and tenant has not been a good one for a while. It was his understanding, in December, the tenant had been having issues with individuals he had been associating with, who started to occupy his residence. He left the residence in December and had since gotten assistance to remove those individuals, including assistance from the landlord. The authorized representative notes that at this time, the landlord changed the locks, boarded up and illegally evicted his client. He notes that his client had no where else to live, he continued to believe that that was his residence and went back in. He also notes that the landlord has not yet provided his client with the keys to his residence, and if the place is barricaded it is because it is the only way the tenant can control access to his residence.
23. The authorized representative felt that the landlords own evidence demonstrates his efforts to illegally evict his client. The landlord is aware that his client continues to reside on the premises; yet he has provided text messages from him to the people who pay the rent for his client asking them to terminate his benefits because he no longer lives there. He argues that it is in this context, this issue must be assessed. Again, he notes that his client broke back into his own residence, resulting in the landlord contacting the police. This resulted in several unfortunate incidents with the police, however his client did not face criminal charges of breaking and entering; that these charges could not be made out as he was not legally evicted.
24. The authorized representative notes that his client continues living in the residence, and there are problems. There are issues with repairs, the water, and services such as Wi-Fi, cable and telephone have been unilaterally discontinued by the landlord. He feels that this is the context in which the question of uninhabitability must be considered.

Analysis

25. To establish whether an order for vacant possession is warranted, the validity of the termination notice must first be determined.
26. Section 21) of the *Residential Tenancies Act*, states:

Notice where premises uninhabitable

21 (2) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where an action of, or a failure to act by, a tenant makes a residential premises unfit for habitation, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises effective immediately.

(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.*

27. The landlord testified that the notice was personally served to the tenant on 19 December 2023. The landlord's termination notice did meet the requirements of sections 34: Requirements for Notice, and section 35: Service of Documents of the Act.
28. While the technical requirements of the termination notice have been met, consideration must be given to what constitutes "uninhabitability". In general, a premises would be considered unfit to live in when there is a serious risk to the health and safety of person(s) in residence or to the public.
29. Residential Tenancies Policy 07-006 states "If an action of the tenant causes the premises to become uninhabitable (i.e.: due to non-payment of utilities, the electrical power to the premises is disconnected), the landlord may issue a termination notice that the rental agreement is terminated, and the tenant is required to vacate the rental premises immediately."
30. In this instance, the landlord contends that the tenant's actions had rendered the premises uninhabitable, prompting the termination notice on 19 December 2023. Evidence, up to the date of termination, that was provided in support of this allegation includes, a copy of a receipt for pest control dated March 2023, photo's dated October 2023 of garbage/debris outside of the residence and a broken window, a December 2023 notice to the tenant to remedy issues; and the landlords own testimony regarding the unsanitary conditions inside the residence.
31. Both evidence and testimony suggest that at the time the termination notice was issued the tenant was failing to meet his statutory obligations as per section 10(1)2 of the Act which states, "*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.*" However, while this may result in poor housing conditions, there is insufficient evidence to establish 'uninhabitability' warranting immediate vacancy.
32. I note that both the landlord and tenants authorized representative provided evidence and testimony regarding additional issues that occurred after the 19 December 2023 notice of termination. As the purpose of this hearing is to render a decision solely on the matter of the landlord's application requesting an order to vacate the premises, this information was not considered in determining the validity of the termination notice.

Decision

33. The termination notice dated 19 December 2023 is invalid.
34. The landlord's application for an order of vacant possession fails.

6 May 2024

Date

