

Residential Tenancies Tribunal

Application 2024-0062-NL

Decision 2024-0062-NL

Michael Reddy
Adjudicator

Introduction

1. Hearing was called at 1:46 PM on 5 February 2024.
2. The applicant, [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,” attended by teleconference. The tenant did not call any witnesses.
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 her account of events are more likely than not to have happened.

Preliminary Matters

5. The landlord submitted an affidavit (**Exhibit L # 1**) stating she served the tenant with notification of today’s hearing via electronic mail on 22 January 2024. The tenant confirmed receipt of the Application for Dispute Resolution and did not dispute this claim by the landlord.
6. The landlord amended her application and was seeking payment of utilities in the amount of \$1,437.31 owing on the date of the hearing, along with vacant possession of the rental property and hearing expenses.

Issues before the Tribunal

7. The landlord is seeking:
 - a. Vacant Possession of the rental premises;
 - b. Payment of utilities in the amount of \$1,437.31; and
 - c. Hearing Expenses \$20.00.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10, 19, 21 and 22, and *Policy 07-006 Premises Uninhabitable of the Residential Tenancies Program*.

Issue 1: Vacant Possession of the Rental Premises

Landlord Position

10. The landlord reviewed the written rental agreement (**Exhibit L # 2**). She said that the tenant has a monthly agreement which started on 29 October 2023 and the tenant remains in the rental property on the date of the hearing (5 February 2024). The rental period is from the 1st day of the month until the last, with rent set at \$850.00 each month on the 1st day. There was a security deposit collected on 26 October 2023 in the amount of \$500.00 as well as what the landlord identified as a “pet fee” deposit of \$500.00 collected on the same day as the security deposit. As indicated within the signed written rental agreement by both landlord and tenant, this “pet fee” is a “non-refundable pet fee of \$500.00.
11. The landlord stated on 6 December 2023, her father attended the rental premises to conduct an inspection on the condition of the property. At that time, there were concerns identified with the cleanliness of the property, damaged to an exterior door of the property, concerns with “excessive clutter” and concerns with potential fire hazards (**Exhibit L # 3**). In addition to this inspection report, there were pictures taken which a dog was observed inside the residence, along with pictures of cluttered entry/exits into a number of rooms of the property (**Exhibit L # 3**).
12. The landlord offered testimony indicating the tenant had contacted her with concerns regarding the furnace not properly working. The landlord had attempted to rectify concerns with the heating of [REDACTED], NL and on 22 December 2023, a furnace technician attended the rental property. She stated upon arrival, the furnace technician contacted her about safety concerns he observed including: the furnace not being used appropriately; furnace oil not being in an appropriate container and inside the basement; and the cleanliness of the rental unit (**Exhibit L # 4**). The landlord stated the tenants are responsible for maintaining furnace heating oil and she was informed by the technician that the tenants have been putting heating fuel in the tank from inside the home, which was a fire and safety risk to the tenants and the rental property.
13. The landlord included with her application pictures taken by the furnace technician (**Exhibit L # 8**). Those pieces of evidence reveal lack of safe entrance to the basement and laundry room of the rental property, along with damage to a window in the rental unit in need of repair.
14. The landlord testified on 3 January 2024 she issued the tenant a Landlord’s Notice to Terminate Early- Cause under section 19, section 21 and section 22 of the *Residential Tenancy Act, 2018* with a request for the tenant to be out of the rental address on 3 January 2024 (**Exhibit L # 5**). The landlord on 3 January 2024, also issued the tenant a

signed letter indicating concerns for the safety concerns within the rental unit and cleanliness of the 3-bedroom home (**Exhibit # 6**).

15. The landlord testified on 23 January 2024 an inspector attended the rental property to conduct an inspection, at which time, the tenant initially denied the inspector entry into the home. Upon entry, the inspector summarized, "The inspection exposed multiple issues within the property that warrant urgent attention. A comprehensive plan for cleaning, repairs, and safety improvements is strongly advised" (**Exhibit L # 7**).
16. Along with her Application for Dispute Resolution, the landlord included pictures taken inside [REDACTED] NL on 23 January 2024 (**Exhibit L # 8**). These pieces of evidence reveal a broken window. The landlord testified this was damaged by the tenant or a visitor of the tenant and has not been repaired by the tenant. The landlord stated the pictures on 23 January 2024 were consistent with the pictures from 22 December 2023 as she testified there were continued lack of safe entry into the basement area, the basement area continued to reveal a number of electrical cords on the floor and hanging from the ceiling, there were continued fire concerns in the basement, the laundry room continued to have soiled laundry in the door way, and the window remained in need of repair.
17. The landlord testified she attempted to have an inspector return to the rental property following 23 January 2024 however the tenant denied the inspector entry into the home. The landlord testified she is concerned for the condition of her rental property and stated she has no knowledge to the current condition of the property as the tenant will not permit an inspector in to view.
18. The landlord is seeking an order of vacant possession.

Tenant Position

19. The tenant confirmed she received the landlord's Notice to Terminate Early- Cause as described by the landlord. The tenant testified she had initially contacted the landlord about concerns with the furnace and, after doing so, a furnace technician came to the rental to attempt to repair it. The tenant disputed that there was heating oil inside the basement and she denied that neither her, her fiancée or their three children had been attempting to repair the furnace.
20. The tenant confirmed she denied entry of the inspector into the rental after 23 January 2024 and attributed this to a distrust of that person. The tenant stated the laundry room had been "piled up" due to the tenants experiencing a gastro virus. She confirmed the damaged window had not been repaired.

Analysis

21. The landlord issued the tenant a termination notice which cited three reasons, section 19, section 21 and section 22. More than one authority may be cited for issuing a termination notice, and if contested, the person issuing the notice is only required to prove validity of one of the applicable sections. With each of the cited reasons, there are different notice period requirements. A section 19 notice of the *Residential Tenancies Act*, 2018 requires 10 days. A section 22 notice requires 5 days, and a section 21 requires immediate vacancy by the tenant.

22. Upon examination of the termination notice issued to the tenant on 3 January 2024 (**Exhibit L # 5**), I observe the notice period (move out date) provided was immediate or same day. In this instance the landlord failed to provide sufficient notice with respect to sections 19 and 22 as per the *Act*. Therefore, the analysis will determine the validity of termination notice in accordance with section 21.
23. In relation to a notice under section 21(2) of the *Act*, requirements are clear:

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.

24. The landlord's termination notice did meet the requirements of sections 34: Requirements for Notice, and section 35: Service of Documents of the *Act*.
25. While I accept the testimony and evidence of the landlord, this evidence must be considered in the context of "uninhabitability". As per *Residential Tenancies Policy Number 07-006*, residential properties are required to comply with the Occupancy and Maintenance Regulations under the Urban and Rural Planning Act. The enforcement authority for these regulations is most often identified as the municipal government. 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.
26. In this instance, the landlord's evidence pertaining to the rental property does reflect an unkept residence, and it does appear that the tenant is not meeting their statutory obligation to maintain a clean premises. However, this does not rise to the level of "uninhabitability". I do not have evidence of noncompliance with the Occupancy and Maintenance Regulations under the Urban and Rural Planning Act. The landlord's request for issuing the termination notice under section 21 does not succeed.

Decision

27. The landlord's request for Vacant Possession fails.

Issue 2: Payment of Utilities- \$1,437.31

Landlord Position

28. The landlord offered testimony that the tenant was fully aware that she was responsible for both furnace oil and the electricity bill and she was responsible to “switch” the electric bill after gaining occupancy of the rental unit in October 2023. She stated this was in compliance of the written rental agreement (**Exhibit L # 2**). The landlord testified since the tenant has resided in the rental unit, she has made multiple requests for the tenant to have the Newfoundland and Labrador Power to be switched to the tenant to no avail. Evidence was also offered by the landlord with her application about those requests (**Exhibit L # 9**).
29. With her Application for Dispute Resolution, the landlord also provided a utilities bill owing for account [REDACTED] in the amount of \$851.69 with the landlord being the identified account with a request to be paid by 18 January 2024 (**Exhibit L # 10**). The landlord stated that the utilities bills are sent out on the 5th of each month and requested to have amount owing up until the date of the hearing (5 February 2024) included in with her application. Following the hearing on 5 February 2024, as per the request of the adjudicator, the landlord supplied an account balance indicating \$1,437.31 with a request to be paid by 20 February 2024 where the landlord was identified as the account holder for [REDACTED] NL (**Exhibit L # 11**).

Tenant Position

30. The tenant offered testimony during the hearing that she had contacted NL Power on a number of different occasions to no avail. She also testified she was aware that she was responsible for the electricity bill and furnace oil.
31. The tenant stated on the day of the hearing (5 February 2024), she again would be attempting to get the utilities account transferred to her name for [REDACTED] NL.

Analysis

32. The landlord, along with her application, provided the written monthly rental agreement in place between herself and the tenant for occupancy of [REDACTED] NL (**Exhibit L # 2**). As noted within the rental agreement, paragraph 31 of that document indicates the following:

Utilities and Other Charges

31. The tenant is responsible for the payment of all utilities in relation to the property.
33. During the hearing, the tenant did not dispute that the NL Power utilities bill was in the landlord’s name and she admitted to not changing the account for [REDACTED] NL over to her name.

34. Section 10(2) of the *Residential Tenancies Act*, 2018 is applicable to this application and situation. As stated in that section of the *Act*:

Statutory Conditions

10 (2) *Where a landlord and tenant enter into a written rental agreement, the statutory conditions set out in subsection (1) shall be reproduced in the rental agreement without variation or modification.*

35. In review of the testimony and evidence offered by both parties in this application, I observe a signed written rental agreement, identifying the utilities being the responsibility of the tenant while an occupant at [REDACTED]. In addition, the tenant acknowledged during the hearing, of her responsibility while a tenant, to change the utilities account to her account. I also accept the evidence provided by the landlord that the bill amount on the date of the hearing equals \$1,437.31.

Decision

36. The landlord's claim for payment of the utilities outstanding up to the day of the hearing (5 February 2024) succeeds in the amount of **\$1,437.31**.

Issue #3: Hearing expenses- \$20.00

37. The landlord submitted the receipt for \$20.00 for the cost of the hearing (**Exhibit L # 12**). As the landlord's claim for vacant possession does succeed, her request for hearing expenses succeeds.

Decision

38. The landlord's request for hearing expenses succeeds in the amount of **\$20.00**.

Summary of Decision

39. The landlord's request for vacant possession fails.
40. The tenant shall pay the landlord **\$1,457.31** as follows:
- Utilities outstanding.....\$1,437.31
 - Hearing Expenses.....\$20.00

23 February 2024
Date

[REDACTED]
Michael Reddy
Residential Tenancies Office