

Residential Tenancies Tribunal

Application 2024-0121-NL

Decision 24-0121-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 12-March-2024 at 9:04 am.
2. The applicant, [REDACTED] hereinafter referred to as the tenant, appeared via teleconference.
3. The respondent, [REDACTED] hereinafter referred to as the landlord, also appeared via teleconference.

Issues before the Tribunal

4. Should the tenant's application for repairs be granted?
5. Should the tenant's claim for compensation for inconvenience be granted?
6. Is the termination notice dated 20-February-2024 valid?
7. Should the landlord's application for an order of vacant possession be granted?

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* (the *Act*).
9. 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: Repairs

Tenant's Position

10. The tenant submits that the landlord is required to fix a malfunctioning stove. In particular, he claims the range hood positioned above the stove is not providing adequate ventilation while cooking. He says when he brought this to the attention of the landlord, the landlord said he needed to use the air exchanger system. He testified that he did not wish to activate the system as he believed the ducts contained mold, and mold grew around the vents.

Landlord's Position

11. The landlord submits that the fume hood is working. He says he performed a paper towel test by holding it up to the fume hood's intake, and the suction was sufficient to hold the paper towel in place. He testified that he was trying to explain to the tenant that the range hood's functionality is affected by the air exchanger system, as it relies on the system for outflow. He submitted that the air exchanger system was integral to both the function of the fume hood and that its use is necessary to prevent mold accumulation.

Analysis

12. The tenant provided video evidence (T#1) in which he is using the stovetop. Visible steam rises from one of the pots and ascends to the ceiling. Unfortunately, there is no clear view of the pot. In addition to submitting that turning on the air exchanger would improve the function of the range hood, the landlord submitted that the tenant is not cooking directly under the hood, and that certain cooking styles will lead to better results than others.
13. After considering the evidence in its totality, I am not satisfied on a balance of probabilities that the range hood requires repair. While I accept the tenant's testimony that the ventilation it provides has been adequate, I find that it is equally or more likely to be a result of user error. The tenant's claim for repairs therefore fails.

Issue 2: Inconvenience

14. The tenant's claim for inconvenience was compensation for the heat lost by the need to open the windows while cooking as a result of inadequate ventilation, as required due to the landlord's failure to effect repairs. As I have determined that the tenant has failed to establish on a balance of probabilities that the repairs were required, this claim also fails.

Issue 3: Validity of Termination Notice

Tenant's Position

15. The tenant submits that the termination notice is invalid as he was not required to effect the cleaning/repairs that the landlord requested.

Landlord's Position

16. The landlord submits that the notice is valid. He says the tenant failed to effect the repairs/cleaning he lawfully required and that this is why the notice was issued.

Analysis

17. To be valid, a termination notice must comply with all relevant sections of the *Act*. The landlord provided a copy of the termination notice at issue, LL#7. LL#7 is in writing in the form prescribed by the minister. It contains the name and address of the recipient. It identifies the residential premises for which it is given. It identifies itself as being issued under s. 22 of the *Act*. It therefore complies with s. 34.
18. LL#7 was signed by the landlord. It gives a termination date on which the rental agreement terminates and the tenant is required to vacate the residential premises. It was served on the tenant via email, in accordance with s. 35(2)(f) of the *Act*. It therefore complies with s. 22(3).
19. For a termination notice issued under s. 22 to be valid, it must be preceded by a notice to effect repairs/cleaning. The landlord produced such a notice, which was accepted into evidence as LL#6. The landlord testified that this notice was served via email. It is dated

13-February-2024 and requests 5 items be addressed by 18-February-2024. It requests that the tenant clean the mold buildup which parties agree has occurred during the tenancy. It also requests that the tenant engage the air exchanger system and turn on the basement rec-room heater to at least ten degrees. Both of these requests are for the explicit purposes of preventing further mold buildup.

20. For this notice to be valid, it must be in response to the tenant's contravention of statutory condition 2 as set out in section 10 of the *Act*. Statutory condition 2 reads 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.

21. The tenant submits that he has kept the premises clean and that he has not caused any damage through wilful or negligent acts. He submits that the mold buildup has been caused by the landlord's failure to keep the air exchanger system in good repair. He provided no direct evidence that the air exchanger system was not in good repair, but suggested that the mold buildup around the vents was itself evidence of this. When asked why he did not request repair of the system or otherwise notify the landlord of an issue with it, he said he did not feel he needed to. He submitted that it was the landlord's duty to maintain the system in good repair and to perform periodic maintenance. The landlord submitted that he did perform periodic maintenance, once a year, and submitted that this is appropriate for the system. The tenant had not dwelled at the premises for a full year.
22. The tenant asked the landlord if he was legally required to keep the air exchanger on. With respect, this question misses the issue. A tenant's duties, like a landlord, are contextual. Statutory condition 2 is one of these duties and requires tenants to keep the apartment clean and to repair damage caused by a wilful or negligent act of the tenant. The tenant has failed to keep the premises clean by refusing to clean the mold buildup. By refusing to engage the air exchanger system or find an acceptable alternative to prevent mold buildup, the tenant has caused damage through negligence. LL#6 is valid.
23. LL#7 was issued on 20-February-2024 and gives a termination date of 26-February-2024. It therefore gives a termination date no less than 5 days after it was issued. It complies with all relevant sections of the *Act* and is therefore valid.

Issue 4: Vacant Possession

24. As a valid termination notice and the termination date has passed, the tenancy has ended.

Decision

25. The tenant's claim for repairs fails.
26. The tenant's claim for compensation for inconvenience suffered fails.
27. The termination notice dated 20-February-2024 is valid.

28. The tenancy ended on 26-February-2024. Insofar as the tenant is still residing at the premises, they are doing so illegally. The landlord's claim for an order of vacant possession succeeds.
29. As the landlord's application was successful, they are entitled to their costs. In this case, hearing costs consist solely of the \$20 application fee.

Summary of Decision

30. The tenant shall pay to the landlord \$20 in hearing expenses.
31. The tenant shall vacate the premises immediately.
32. 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.
33. The landlord is granted an order of possession.

1-April-2024
Date



Seren Cahill
Residential Tenancies Office