

Residential Tenancies Tribunal

Application 2024-0388-NL
Application 2024-0395-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 1:54 p.m. on 13-June-2024.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, attended via teleconference.
3. The respondent and a counter applicant [REDACTED], hereinafter referred to as “the tenant”, attended via teleconference.

Preliminary Matters

4. The landlord submitted an affidavit with his application stating that he had served the tenant with the notice of hearing by prepaid registered mail tracking# [REDACTED] at [REDACTED] on 23-May-2024 (LL#1). The landlord also submitted a proof of service (LL#2). In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. The tenant did not submit an affidavit with her application, but provided testimony and submitted proof of service that she had served the landlord with the notice of hearing by email to: [REDACTED] on 27-May-2024 (TT#1). The landlord agreed that he received the email on that date. In accordance with the *Residential Tenancies Act, 2018* the hearing proceeded.
6. There was a written fixed term rental agreement which commenced on 1-June-2021 for 1 year which is currently a month-to-month rental agreement. Rent is \$1450.00 per month, due on the first of each month. A security deposit was paid in the amount of \$900.00 on 26-April-2021 and is in landlord’s possession.

Issues before the Tribunal

7. The landlord is seeking:
 - An order for vacant possession of the rented premises.
8. The tenant is seeking:
 - Validity of termination notice.
 - Compensation for inconvenience \$140.00.

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 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

Validity of termination notice

Relevant Submissions

11. The landlord submitted a copy of the 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 1-May-2024 under Section 22; Notice where tenant's obligation is not met. The termination date was listed as 7-May-2024.

Landlord's Position

12. The landlord testified that he gave the tenant a termination notice under Section 22 of the *Act* as he felt that this section was applicable to the current situation with the tenant. The landlord testified that there was a leak in the basement of the rental unit, and when he went to address the leak, he was unable to physically access the room due to garbage and disorganized belongings of the tenant. The landlord claimed that the tenant was not maintaining the rental premises in a clean condition and that the accumulation of garbage has become problematic. Additionally, the landlord reported that there was furniture, a spring box, and other belongings in the backyard that appeared to be garbage. The landlord stated that he gave the tenant a written notice – *Landlord's Request for Repairs* to clean the premises inside and outside and remove the garbage on 24-April-2024 to be completed on or by the 30-April-2024 (LL#4).
13. The landlord also testified that the bedrooms were painted by the tenant. The landlord stated that the tenant painted rooms without obtaining any permission or making any formal request. The landlord submitted photographs to support the claim (LL#5). The landlord emphasized that maintaining consistent colors across his properties is very important in his rental business. Since the tenant was not permitted to repaint bedrooms, the landlord issued a written notice – *Landlord's Request for Repairs* to paint the master bedroom and 2 other bedrooms to return to their original color and quality. The request was signed on 24-April-2024 to be completed on or by 30-April-2024 (LL#6).

Tenant's Position

14. The tenant did not dispute that she is responsible for the garbage inside the unit and outside the rental premises. With regards to the paint the tenant disputed that she was not permitted to paint the bedrooms and stated that the landlord gave her a permission to paint the bedrooms. The tenant stated that she had a verbal agreement with the landlord that she will repaint the bedrooms prior to vacating the unit.

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. Also relevant is subsection 2 of Section 10 of the *Residential Tenancies Act, 2018* that 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 the tenant was not fulfilling her obligation to keep the premises clean. The landlord testified that there was still a lot of garbage around the premises when he returned for inspection on 30-April-2024. The landlord stated that the removal of the garbage from the exterior of the premises was sufficient, however the garbage inside the unit was moved from one room to another which, in landlord's opinion, did not solve the problem. As the tenant did not comply with Section 10 of the Act as stated above, I find that the landlord was within his rights to give a termination notice under Section 22. The termination notice was given on the 1-May-2024 to vacate on 7-May-2024 which meets the requirements not less than 5 days after the notice has been served. For this reason, I find that the termination notice is a valid notice.

18. With regards to the paint on the bedroom walls, I accept the landlord's testimony that he did not grant permission to repaint the walls as he wished to keep the color scheme through all his rental units. I asked the landlord when the bedroom walls were last painted, and he responded that the unit was freshly painted prior to the tenancy in 2021. As it has been determined in paragraph 17 that the termination notice is a valid notice, the repainting of the bedroom walls will not be further analysed for the purpose of this decision.

19. I find that the tenant should have vacated the premises by 7-May-2024.

Decision

20. The landlord's claim for vacant possession of the rented premises succeeds.

Issue # 2: Compensation for inconvenience \$140.00.

Relevant Submissions

21. The tenant is seeking the reimbursement for the garbage removal service in the amount of \$140.00.

Tenant's Position

22. The tenant stated that she incurred a cost of \$140.00 to comply with the landlord's notice to clean the outside of the rental unit. The tenant testified that there was vacuum, some

furniture and spring box in the backyard of the rental unit and she submitted photo to support the claim (TT#2). The tenant is seeking the reimbursement of \$140.00 asserting that she planned to wait until June to remove her furniture for free through the city program. However, due to the landlord's notice, she was forced to hire a garbage removal service and pay \$140.00. The tenant submitted a quote from the garbage removal service (TT#3) and the proof of e-transfer to substantiate the claim (TT#4). The tenant stated that the landlord is responsible for the expenses incurred as a result of the notice to clean the rental premises on or by 30-April-2024.

Landlord's Position

23. The landlord disputed that he owes any money to the tenant for the garbage removal service, as the tenant has an obligation to keep the rental unit clean and maintained.

Analysis

24. Due to the Section 10 (2) of the *Residential Tenancies Act*, the tenant is obligated to keep the residential premises clean. The landlord served the tenant with the notice to clean the outside of the rental unit because of the presence of the vacuum, spring box, other furniture and other belongings of the tenant that was deemed garbage in the backyard. And for those reasons, I find that the landlord is not responsible for any costs associated with the removal of the tenant's garbage.

Decision

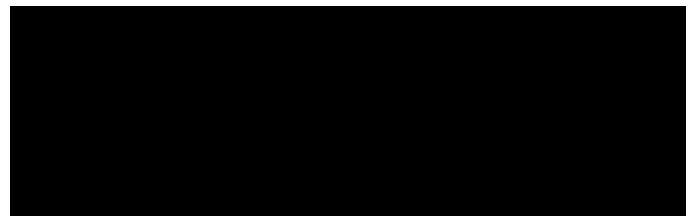
25. The tenant's claim for compensation of the inconvenience in the amount of \$140.00 does not succeed.

Summary of Decision

26. The tenant shall vacate the property immediately.
27. The landlord will be awarded an Order of Possession.

June 27, 2024

Date



Oksana Tkachuk
Residential Tenancies Office