

Residential Tenancies Tribunal

Application 2024-0495-NL

Michael Reddy
Adjudicator

Introduction

1. Hearing was called at 9:02 AM on 11 July 2024 via teleconference.
2. [REDACTED], hereinafter referred to as "landlord1", attended the hearing. [REDACTED], hereinafter referred to as "landlord2", attended the hearing.
3. [REDACTED], hereinafter referred to as "tenant1", attended the hearing. [REDACTED], hereinafter referred to as "tenant2", attended the hearing.

Preliminary Matters

4. The landlords submitted affidavits of service stating the tenants were served with the Application for Dispute Resolution electronically at [REDACTED] on 25 June 2024 at approximately 10:04 and 10:07 AM (Exhibit L # 1). Tenant1 did not dispute she received the Application for Dispute Resolution but disputed being able to open the attached evidence. On 26 June 2024, tenant1 testified she attended Residential Tenancies at which time she was provided a hardcopy of the evidence for this application.
5. There is a written fixed term rental agreement which commenced on 1 August 2023 (Exhibit L # 2). Rent is set at \$1,400.00 due on the 1st of each month. A security deposit was collected on the tenancy in the amount of \$700.00 paid to the previous owners of the rental property, still in the possession of the landlords.
6. In a proceeding under the Residential Tenancies Act, 2018, the applicants have the burden of proof. This means the applicant has the responsibility to prove 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 applicants have to establish that their account of events is more likely than not to have happened.

Issues before the Tribunal

7. The landlords are seeking:

- An Order of Vacant Possession of the rental property.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in Sections 46 and 47 of the *Act*, 2018.
9. Also, relevant and considered in this case are Sections 22, 34 and 35 of the *Act*.

Issue 1: Vacant Possession of the Rental Premises

Landlords Position

10. The landlords testified they took ownership of the three-bedroom upstairs apartment at [REDACTED], in February 2024 at which time both tenants were occupants of the rental. Landlord2 testified the tenants had been issued a 24-hour notice to enter the rental on 17 May 2024 electronically to tenant1 for 18 May 2024. Upon entering [REDACTED], the landlords observed damages to the flooring, walls and kitchen cupboards.
11. Landlord1 testified after seeing the condition of the rental property, the landlords issued the tenants a request for repairs to be done within 5 days. The landlords did not provide this piece of evidence along with their application. Landlord1 testified the repairs were not completed by the tenants. Landlord1 stated they issued the tenants a Landlord's Notice to Terminate Early- Cause on 24 May 2024 electronically with a request to be out of the property by 29 May 2024 (Exhibit L # 3).

Tenants Position

12. Tenant1 disputed receiving the notice electronically from the landlords to enter the rental. She also testified that she did not currently reside at [REDACTED]. [REDACTED]; only tenant2 resided. Tenant1 stated she was in Alberta at the time tenant2 had been issued the landlord's notice to enter the property in May 2024. She suggested some of the damages to the rental were from before they had taken occupancy. Tenant1 stated the holes in the wall were caused by tenant2 and they had been issued a landlords request for repairs to be completed 5 days after receipt.
13. Tenant2 testified the landlords 24-hour notice was placed in his mailbox. He stated there were damages including two holes in the wall, cigarette burns in the carpet and the laundry room door which, "will be fixed" before vacating the property.
14. Tenant1 stated she did receive the Landlord's Notice to Terminate Early- Cause with a request be out of the rental by 29 May 2024. She testified rent for June 2024 and July 2024 were not paid following receipt of this notice to vacate.

Analysis

15. The termination notice is invalid as it fails to meet the time requirements in 22(2), specifically, the termination notice was given on 24 May 2024 under Section 22: Notice

where tenants obligations not met to vacate on 29 May 2024. The termination date was given less than 5 days after the notice was served which does not meet the required as set out in the Act. I find the termination notice is not a valid notice from a timeline perspective and as such was not further analyzed for validity under Section 22 of the Act.

Decision

16. The landlord's claim for vacant possession of the rented premises does not succeed.

25 July 2024

Date



Michael Reddy, Adjudicator
Residential Tenancies Office