

Residential Tenancies Tribunal

[REDACTED] Decision 19-172-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:20 am on 26 March 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate in the hearing.

Issues before the Tribunal

3. The landlord is seeking an order for vacant possession of the rented premises.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case is section 21 of the *Residential Tenancies Act, 2018*, rule 29 of *The Rules of the Supreme Court, 1986*, *The St. John's Residential Property Standards By-Law* and *Simmons-Barrow et al. v. Tobin et al., 2004 NLSCTD 166*.

Preliminary Matters

6. The tenant was not present or represented at the hearing. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) a respondent to an application must be served with claim and notice

of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as she has been properly served. The landlord had received permission from the Director to serve the tenant with the claim and notice of the hearing by posting those documents to the front door of the rental unit and he testified that he did this on 15 March 2019, 10 clear days before the hearing date. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

Issue 1: Vacant Possession of the Rented Premises

Relevant Submissions

The Landlord's Position

7. The landlord stated that he had entered into a monthly rental agreement with the tenant on 01 April 2018. The agreed rent is set at \$1000.00 per month and is paid on the tenant's behalf by the Department of Advanced Education, Skills and Labour (AESL). Rent for March 2019 is paid and up-to-date.
8. The landlord stated that the tenant has caused significant damage to the rental unit and he submitted photographs showing that damage at the hearing (██████████ #2-14). These photographs, which were all taken within the last couple of weeks, show that the exterior door to the rental unit, as well as 2 windows, had been damaged and were no longer operable. The landlord stated that the tenant had placed a board across the living room window to hold it in place and she had inserted another piece of wood in the door frame so the door could close.
9. With respect to the front door, the landlord testified that he had repaired that door and has put a new lock on it. He left a note at the unit for the tenant to contact him to collect the new keys, but he stated that she has yet to be in contact with him and he hasn't seen her at the unit in the past 2 weeks. The landlord stated that he suspects that the tenant has moved out and is no longer residing at the rental unit.
10. The photographs also show that many of the interior doors are damaged and all the kitchen cabinet doors have been removed. Additionally, the faucet to the bathtub has been broken off and there is a crack in the toilet's cistern. The landlord also claimed that all the fuses in the panel box have been blown.
11. Besides this damage, the landlord also claimed that there were approximately 10,000 used, intravenous needles found all throughout the apartment and the landlord stated that the tenant had been using the rental unit as a "flop house". He claimed that the tenant had been allowing numerous people into her apartment, where they would do drugs, and they had been entering through the windows on many occasions.

12. The landlord stated that he had issued the tenant 2 termination notices—one was issued on 20 February 2019 and the other on 05 March 2019. A copy of that second notice was submitted with the landlord's application (████ #1). That notice was issued under section 21 of the *Residential Tenancies Act, 2018* (notice where premises uninhabitable) and it had an effective termination date of 05 March 2019.
13. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

14. In St. John's, the municipality where this rental unit is located, the "minimum standards and regulations for the occupancy and maintenance of residential property" are to be found in *The St. John's Residential Property Standards By-Law*.
15. According to that by-law:

GENERAL DUTIES AND OBLIGATIONS

4.1 No person shall use, permit the use of, rent, or offer to rent any dwelling, dwelling unit, or room in violation of any provision of this By-Law or any other by-law or regulation of the City.

16. In short, a rental unit that is not maintained in accordance with the standards set out in that by-law (or other by-laws or regulations of the City) is not to be used by a person as a dwelling unit and is, therefore, "unfit for habitation."
17. Section 17 of this by-law states:

DOORS AND WINDOWS

17.1 All windows, doors and hatchways in a dwelling or accessory building shall be maintained in good repair, weathertight and so as to prevent the entry of insects and animals.

17.2 Without restricting the generality of Section 17.1, the maintenance required includes:

- (a) *painting,*
- (b) *repairing or renewing damaged, decaying or rotten:*
 - (i) *doors,*
 - (ii) *door frames and casings,*
 - (iii) *window sashes, and*
 - (iv) *window frames and casings.*

- (c) refitting doors and windows,
- (d) weather stripping,
- (e) repairing or replacing defective or missing door hardware and defective or missing window hardware,
- (f) reglazing, and
- (g) using other suitable means of weatherproofing.

18. The evidence submitted by the landlord at the hearing establishes that the rental unit is in a poor state of repair and I find it probable that the bulk of this damage was either caused by the tenant or caused by people the tenant had allowed into her apartment. In particular, I find it probable that the tenant is responsible for causing the damage to the front door and the 2 windows making them inoperable. In so doing, the tenant had caused the rental unit to be in violation of section 17 of *The St. John's Residential Property Standards By-Law* and, therefore, had made the unit unfit for habitation.

19. Section 21 of the *Residential Tenancies Act, 2018* states:

Notice where premises uninhabitable

21. (1) Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes statutory condition 1 set out in subsection 10(1), the tenant may give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises effective immediately.

(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 person providing the notice;
- (b) state the date on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and
- (c) be served in accordance with section 35.

20. As the tenant had made the rental unit unfit for habitation, I find that the landlord was in a position to issue the tenant a termination notice under section 21 of this Act. As the landlord's notice meets all the requirements set out in this section of the Act, the notice is valid.

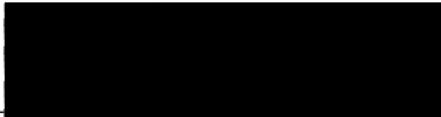
Decision

21. The landlord's claim for an order for vacant possession of the rented premises succeeds.

22. The tenants shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

27 March 2019

Date


John R. Cook
Residential Tenancies Tribunal