

Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0567-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:01 am on 17 February 2021 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate.

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 20 of the *Residential Tenancies Act* and rule 29 of the Rules of the Supreme Court, 1986.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach her by telephone from the hearing room. 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) respondents 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 submitted an affidavit with her application stating that the tenant was served with

notice of the hearing by registered mail and the associated tracking history shows that that letter was delivered on 17 December 2020. The tenant has had 61 days to provide a response. 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 Rented Premises

Relevant Submissions

7. The landlord stated that she had entered into a monthly rental agreement with the tenant on 12 August 2019 and a copy of the executed lease was submitted with her application. The current rent is set at \$263.00 and is paid on the tenant's behalf by the [REDACTED]
8. The rental unit is a 4-bedroom apartment and when the tenant first moved in, she shared the unit with her 3 children. The landlord testified that these children have subsequently been removed from the unit by Child Protection Services and the tenant now lives in this 4-bedroom apartment by herself.
9. The landlord pointed to section 10 of the submitted lease, which states:

Housing Initiated Transfer

(m) The Tenant understands and agrees that the Tenants right to continue in occupancy is relative to the number of persons occupying the premises. The Tenant may be required to vacate the Leased Premises or may be obliged to accept a larger or smaller accommodation if the number of persons occupying the Rental unit increases or decreases.

The Landlord shall provide the Tenant with reasonable notice and in any case no less than one (1) months notice to effect removal from the Tenant's present premises to transfer to smaller or larger accommodations as the case may be.

10. The landlord stated that because the number of people living at the unit had decreased, arrangements were made to move the tenant to a smaller apartment.
11. With her application, the landlord submitted 2 notices which were delivered to the tenant on 20 October 2020. In the first notice, the tenant is informed that she has been approved for a smaller apartment in a different complex and she is required to vacate her unit by 23 October 2020. That notice also states that if the tenant fails to vacate, she would be in violation of her lease and an eviction notice would be issued.

12. In the second notice, the tenant is informed that her move-in date is 23 October 2020 and she has to vacate her unit by 30 October 2020.
13. The landlord also stated that besides these 2 notices from 20 October 2020, a previous notice was issued to the tenant on 02 October 2020 informing her that she would have to vacate her unit at the end of the month. That notice was not submitted into evidence.
14. The landlord stated that the tenant has not moved out of her current unit, as required, and therefore, on 15 December 2020 the landlord served her with a termination notice. A copy of that notice was submitted with the landlord's application. That notice was issued under section 20 of the *Residential Tenancies Act, 2018* (notice where material term of agreement contravened) and it had an effective termination date of 31 January 2021.
15. The landlord stated that the tenant has not vacated the rental unit as required and she is seeking an order for vacant possession of the rented premises.

Analysis

16. The relevant subsections of section 20 of the *Residential Tenancies Act, 2018* states:

Notice where material term of agreement contravened

20. (2) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes a material term of a rental agreement, the landlord may give the tenant written notice of the contravention, and if the tenant fails to remedy the contravention within a reasonable time after the notice has been served, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises.

(3) Where the tenant gives a landlord notice under subsection (1) or the landlord gives a tenant notice under subsection (2) that a rental agreement is terminated, the notice shall be given

...

(b) not less than one month before the end of a rental period where the residential premises is

- (i) rented from month to month,**
- (ii) rented for a fixed term, or**
- (iii) a site for a mobile home.**

17. Based on the evidence and testimony submitted at the hearing, I find that the termination notice issued to tenant on 15 December 2020 is not valid, for 2 reasons.
18. First, section 20 of the *Act* requires that, where a tenant commits a material breach of her agreement, the landlord must give the tenant notice that she is in breach and then give her a reasonable period of time to remedy the breach. No evidence was submitted at the hearing indicating that such notice was issued to the tenant.
19. According to the landlord, 3 notices were issued to the tenant in October 2020 indicating that she had to vacate the unit at the end of October 2020. But on 02 October and on 20 October 2020, the tenant had not yet committed any breach of her lease. These were just notices informing her that the landlord was exercising her right under s. 10(m) of the lease and were requiring that the tenant move to a smaller unit. Only after the tenant failed to move to the smaller unit would she be in violation of her lease. On 20 October 2020, no breach had yet been committed.
20. No evidence was submitted at the hearing showing that the landlord had informed the tenant, after 30 October 2020, that she had committed a breach of their agreement and no evidence was submitted showing that the landlord had provided her with a timeframe by which to remedy the breach. Instead, the landlord straightaway issued the tenant a termination notice without affording her the opportunity to correct the situation.
21. Second, I also find that the tenant had not committed a breach of her lease. Section 10(m) of the submitted lease states that where the landlord requires the tenant to relocate to a smaller or larger unit, the landlord shall provide the tenant with "no less than one (1) months notice to effect removal from the Tenant's present premises". The 2 notices from 20 October 2020 require that she vacate on 23 October and 30 October 2020, respectively, and they therefore run afoul of that 1 month notice period. Likewise, the earliest move out date the prior notice from 02 October 2020 could specify would be 03 November 2020.
22. As the landlord had not provided the tenant with a month's notice that she was required to vacate the rented premises, the tenant was not in breach of their rental agreement when she failed to move out as she had not received adequate notice.
23. For these 2 reasons, the termination notice issued to the tenant on 15 December 2020 is not valid.

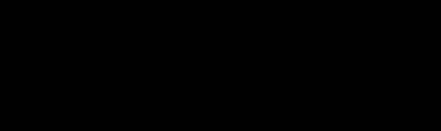
Decision

24. The termination notice issued to the tenant on 15 December 2020 is not a valid notice.

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

17 February 2021

Date



John R. Cook
Residential Tenancies Tribunal