

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0167-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:11 pm on 13 May 2021 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as "the tenant", participated in the hearing. He was represented at the hearing by [REDACTED] from The Gathering Place
3. The respondent, [REDACTED] was represented at the hearing by Lawrence George, hereinafter referred to as "the landlord".

Issues before the Tribunal

4. The tenant is seeking the determination of the validity of a termination notice issued to him on 05 April 2021.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case are sections 10, 20, 21 and 24 of the *Residential Tenancies Act, 2018*.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

Background

7. The landlord and tenant entered into a monthly rental agreement on 01 May 2019 and a copy of that agreement was submitted with the tenant's application [REDACTED] #1). The agreed rent is set at \$800.00 per month and the tenant paid a security deposit of \$400.00.
8. On 05 April 2021 the landlord issued the tenant a termination notice and a copy of that notice was submitted with the tenant's application [REDACTED] #2). That notice was issued under 2 different sections of the *Residential Tenancies Act, 2018*: section 21 (notice where premises are uninhabitable) and section 24 (notice where tenant contravenes peaceful enjoyment and reasonable privacy). That notice had an effective termination date of 07 April 2021.
9. I pointed out to the parties at the hearing that where a landlord believes that the tenant has interfered with the peaceful enjoyment of other tenants residing at the complex, he may issue a termination notice under section 24 of the *Act*, and that notice must specify a termination date which is "not less than 5 days after the notice has been served."
10. As there is only 1 day between the date the notice was issued, 05 April 2021, and the specified termination date, 07 April 2021, that notice does not meet the timeframe requirements under this section of the *Act*, and is therefore invalid on those grounds.
11. The notice does meet the timeframe requirements specified under the other section cited by the landlord in that notice—section 21, premises uninhabitable—and the hearing was restricted to testimony and evidence concerning that matter.

The Landlord's Position

12. The landlord stated that on 01 April 2021 he had the hot water boilers replaced at the complex and his plumber was required to enter the tenant's apartment to assess the water pressure.
13. The plumber reported to the landlord's spouse that the tenant had collected between 20 and 40 bicycles which were being stored in his unit. He also reported that the pantry door had been damaged and that the unit was "filthy". The plumber also stated that syringes were seen on the floor and there were cigarette butts and ashtrays found in the property.
14. The landlord stated that neither he nor his wife had been in the unit and, besides the report he had received from his plumber, no other evidence was submitted to the Board to establish the condition of the tenant's apartment (e.g., photographs, etc.)

The Tenant's Position

15. The tenant acknowledges that he had been collecting bicycles and repairing them, but he claimed that there are only 10 bicycles in his unit.

16. He denied that there are any syringes in his unit or that he had been smoking in the apartment. He also denied that the unit is dirty or that he had caused any damage to the unit.
17. █ also pointed out that no inspector from the █ had been to the unit to inspect the property and there has been no determination made by the City that the unit is uninhabitable.

Analysis

18. The relevant subsections of section 21 of the *Residential Tenancies Act, 2018* states:

Notice where premises uninhabitable

21. (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.***

19. The landlord stated he had not been in the tenant's apartment and he had no firsthand testimony to provide to the Board concerning the condition of the tenant's apartment. No evidence was submitted at the hearing to corroborate his claims (e.g., photographs, witness statements, etc.) and his statements about what his plumber had reported to his wife amounts to nothing more than hearsay.
20. The tenant denied the landlord's claims and based on the landlord's lack of evidence, I have to conclude that the landlord had not provided enough evidence that would allow me to make a determination of the condition of the tenant's apartment.
21. In any case, even if the unit is in the condition described by the landlord, I find that it does not meet the threshold standard of being uninhabitable and no evidence was presented at the hearing to establish that the apartment is in

violation of the [REDACTED] Residential Property Standards by-law or any other by-laws of the [REDACTED]

22. Rather, if the description provided by the landlord is true, it would likely only mean that the tenant had not been meeting his statutory obligation to repair damage he caused to the unit and his obligation to keep the unit clean. That would be a breach of his rental agreement. But where a tenant commits a material breach, the landlord first has to give the tenant a notice of the breach and then allow him some time to rectify the matter. Only when a tenant fails to remedy a breach after receiving such notice can the landlord issue the tenant a termination notice. But such a notice, under section 20 of the *Act* (notice where material term of agreement contravened), is a 1-month notice, not a 1-day notice.
23. As the landlord failed to establish that the rental unit is uninhabitable, I find that the termination notice issued to him on 05 April 2021 is an invalid notice.

Decision

24. The termination notice issued to the tenant on 05 April 2021 is not a valid notice.

17 May 2021

Date

