

Residential Tenancies Tribunal

Application 2023 No. 66NL

Decision 23-0066-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:54 PM on 16 February 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. He was represented by [REDACTED] (“[REDACTED]”). The tenant, [REDACTED], hereinafter referred to as “the tenant”, was also attendance.

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 are sections 10 and 22 of the *Residential Tenancies Act, 2018*.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

6. The landlord stated that he had entered into a monthly rental agreement with the tenant on 01 January 2018. The current rent is set at \$800.00 per month.

7. The landlord and ■ both testified at the hearing that the tenant's apartment is in very poor condition. They stated that the tenant has so many piles of clothes on the floors that the landlord cannot even get into their shared laundry room. They also complained that the tenant has a lot of garbage, rotting food and dirty dishes left around his apartment, and there is also mold growing on the food that the tenant has left lying around. ■ also claimed that there is blood in the refrigerator from a package of meat that had leaked. They also claimed that there is a smell of cigarette smoke in the tenants unit.
8. Because of these issues, on 09 January 2023, the landlord issued the tenant a Landlord's Request for Repairs, requiring that the tenant complete the following by 13 January 2023:
 - Properly dispose of garbage
 - Clean and sanitize 2 refrigerators
 - Remove cigarette butts, and cease smoking inside
 - Clean window sills
 - Remove items off floors
 - Properly store food items
 - Clean bathroom
 - Clean all floors
 - Remove drug paraphernalia
 - Remove items from garage
9. ■ stated that on 13 January 2023 she carried out an inspection of the property and she testified that although there was some improvements, the bulk of the cleaning had not been carried out. She claimed that the refrigerator was not clean and there was still blood inside it. She also claimed that all the floors were dirty, and the tenant still had food lying around the apartment.
10. In support of that claim, ■ pointed to her submitted photographs which she stated were taken on 13 January 2023. She pointed out these photographs show that there was still a significant amount of garbage in the unit, that the refrigerator was still dirty, that there was still food left lying about, and the bathroom had not been cleaned.
11. As the tenant had not fully complied with the landlords notice, on 13 January 2023 he issued him a termination notice, and a copy of that notice was submitted with his application. That notice was issued under section 22 of the *Residential Tenancies Act, 2018*, and it had an effective termination date of 19 January 2023.
12. The landlord stated that the tenant has not moved out, as required, and he is seeking an order for vacant possession of the rented premises.

The Tenant's Position

13. The acknowledged receiving the notice to clean his apartment, and he claimed that he had carried out just about everything the landlord had requested, to the best of his ability.
14. The tenant claimed that cleaned out the refrigerators, as requested, and he had collected up his clothes. He argued, though, that as his clothing is his personal property, he should not be required to dispose of them. With respect to the food that was lying about, the tenant claimed that he had collected that food and placed it in boxes, as the landlord would not allow him to use the cupboards upstairs. He also claimed that the only drug paraphernalia in the apartment is his bong, which he uses for his medicinal marijuana.
15. The tenant also complained that there is mold and other maintenance issues in the apartment, and he questioned why he is responsible for cleaning his apartment, when the landlord refused to address the mold issue.

Analysis

16. Statutory condition 2, set out in section 10 of the *Residential Tenancies Act, 2018* states:

Statutory conditions

10. (1) *Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:*

...

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 of a person whom the tenant permits on the residential premises.*

and section 22 of this Act states:

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 specified date not less than 5 days after the notice has been served.

(3) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the landlord;

(b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and

(c) be served in accordance with section 35.

17. I accept the testimony of the landlord and [REDACTED], and the submitted photographic evidence clearly shows that the tenant's apartment is in very poor shape. Those photographs shows that there is a significant amount of garbage lying about the unit, there are open containers of food all through the unit, and it appears that no cleaning had been carried out for some time.
18. Despite this, I find that the landlord's termination notice is not valid. According to the Landlord's Request for Repairs, the tenant had until 13 January 2023 to address the items quoted in paragraph 8, above. Given that this was the deadline, the tenant had until the end of that day to complete the request, and it is only after that deadline has passed that the landlord would be able to issue a termination notice, if he failed to comply. That is, the earliest the landlord would be able to issue a termination notice under this section of the Act would have been 14 January 2023. The landlord's notice was issued a day too soon and it is therefore not valid.

Decision

19. The termination notice issued to the tenant on 13 January 2023 is not a valid notice.
20. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

24 February 2023

Date

[REDACTED]
John R. Cook
Residential Tenancies Tribunal