

Residential Tenancies Tribunal

Decision 20-0338-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:05 pm on 18 September 2020 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord".
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate in the hearing.

Issues before the Tribunal

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

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 and 22 of the *Residential Tenancies Act, 2018* and rule 29 of the Rules of the Supreme Court, 1986.

Preliminary Matters

7. The tenant was not present or represented at the hearing and I was unable to reach him by telephone. 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 respondents' absence so long as he has been properly served. The landlord submitted an affidavit stating that he had personally served the tenant with notice of the hearing on 01 September 2020 and he has had 16 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 his absence.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

8. The landlord runs a property management company and had just recently taken over the management of this rental property. He testified that this tenancy is running on a month-to-month basis and the current rent is set at \$900.00 per month.
9. The landlord stated that he had carried out an inspection of the rental unit on 10 August 2020 and he found that the unit was in a very untidy state and the tenant had caused some damages to the property.
10. In particular, the landlord complained that the tenant had boarded shut the front door with nails and he stated that there were numerous holes in the walls. He also stated that there were cigarette butts on several surfaces, as well as drug paraphernalia and numerous liquor bottles. He also reported that there were several mattresses on the floors and garbage was found all throughout the property, both inside and out. He also claimed that mold was growing on some of the walls. Additionally, there was also an abandoned car in the driveway that was filled with garbage. The landlord submitted photographs and a video with his application to corroborate his testimony.
11. On the following day, 11 August 2020, the landlord issued the tenant a notice to carry out repairs and copy of that notice was submitted with his application. That notice requires that the tenant have the following repairs completed on, or before, 14 August 2020:
 - Removal of Honda Civic
 - Removal of all garbage, front and back of house, bottles
 - All garbage, liquor bottles, cigarette butts removed from house
 - Thoroughly clean all rooms, including mold
 - Repair damaged wall
12. On that same day, 11 August 2020, the landlord also issued the tenant a termination notice and copy of that notice was submitted with the landlord's application. That notice was issued under section 22 of the *Residential Tenancies Act, 2018* (notice where tenant's obligations not met) and it had an effective termination date of 31 August 2020.

13. The landlord testified that he returned to the rental unit again on 19 August 2020 to carry out a second inspection. He reported that the tenant became very upset with him, he uttered threats and then chased him down the road. The landlord stated that he had to call the police because of the behaviour of the tenant and they escorted him into the rental unit for the inspection.
14. The landlord testified that the condition of the property had not improved, but had in fact gotten worse. He also complained that there were several people passed out inside the rental unit.
15. The landlord stated that the tenant had not vacated by 31 August 2020, as required, and he is seeking an order for vacant possession of the rented premises.

Analysis

16. Statutory condition 2, set out in section 10.(1) 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 landlord's testimony and evidence in this matter and I agree with him that, on 10 August 2020, when the landlord conducted the inspection of the rented premises, the tenant was in breach of his obligations as set out in statutory condition 2, quoted above.
18. In issuing a notice to the tenant, on 11 August 2020, to come into compliance with statutory condition 2 by 14 August 2020, the landlord was following the required first steps, as set out in section 22.(1) of the Act, in dealing with this sort of matter.
19. The intention of this section of the Act is to allow a tenant some time, after they have received such a notice, to come into compliance with statutory condition 2 by carrying out the required repairs and cleaning.
20. If a tenant fails to make the necessary repairs within the timeframe set out in the notice, section 22.(2) outlines a second step a landlord may take after that time period has elapsed—he may elect to terminate the tenancy.
21. However, in the case at hand, the landlord did not give the tenant the required minimum amount of time to come into compliance with the notice to carry out the repairs, as intended by this section. Instead, the landlord issued the termination notice on the same day he issued the request for repairs.
22. As the landlord had not given the tenant any time to come into compliance with statutory condition 2 before he had issued the termination notice, as required by section 22.(2), that notice is not valid.

Decision

23. The termination notice issued to the tenant on 11 August 2020 is not valid.
24. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

22 September 2020

Date

John R. Cook
Residential Tenancies Tribunal