

Residential Tenancies Tribunal

[REDACTED] Decision 20-0477-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:03 am on 03 November 2020 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED] [REDACTED], hereinafter referred to as "the landlord". The respondent, [REDACTED], hereinafter referred to as "the tenant", also participated.

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 20 and 34 of the *Residential Tenancies Act, 2018*.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

6. The landlord stated that he had entered into a 1-year, fixed-term lease with the tenant commencing 01 July 2020 and a copy of that executed agreement was submitted with his application.
7. According to this Part 11 of this lease, Additional Tenant Obligations, the tenant had agreed to purchase tenant insurance. However, the landlord claimed that

the tenant did not comply with this condition of her lease, and as of the date of the hearing she still has not purchased tenant insurance.

8. The landlord stated that the tenant had received numerous verbal notices indicating that she was in breach of her agreement insofar as she had failed to purchase insurance. With respect to written notices of that breach, the landlord stated that his leasing agent, ■■■■■, had the following text-message exchange with her on 29 July 2002:

■■■■■: Zipsure is 1-855-364-1944
■■■■■: Anthony insurance is 758-5729
Tenant: Thanks
■■■■■: Any luck
■■■■■: Keep trying
Tenant: No luck
■■■■■: I'm getting a lot of crap about this
Tenant: Kk
■■■■■: Zipsure is still open
Tenant: Yes but got to do it online I have no wifi

9. The landlord complained that the tenant never did purchase insurance as required and he therefore has elected to terminate her rental agreement. With his application he submitted a copy of a termination notice he had issued her on 19 August 2020. 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 30 September 2020.
10. 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

11. The tenant acknowledged that she had received the text-message from ■■■■■ on 29 July 2020. She claimed that she was unable to reach either Zipsure or Anthony Insurance on that day and she also complained that she could no contact them online as she did not have access to Wi-Fi.
12. The tenant argued that if tenant's insurance was a condition of her having an apartment at the complex, he should not have let her move in in the first place without that insurance. She claimed that it was therefore the landlord's fault that she was residing in an apartment without insurance. The tenant also pointed out that she is moving out soon anyhow, and there is no point in her getting insurance at this late stage.
13. The tenant also stated that she did not realize that the landlord was terminating her agreement because she did not have insurance. She stated that she was under the impression that she was being evicted because she had started a fire in her unit.

Analysis

14. The relevant subsections of section 20 of the *Residential Tenancies Act, 2018* state:

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.

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

- (a) be signed by the person providing the notice;
- (b) be given not later than the first day of a rental period;
- (c) state the date, which shall be the last day of a rental period, 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
- (d) be served in accordance with section 35.

15. It was not disputed that the tenant was required to have tenant's insurance as a condition of her lease and I agree with the landlord that her failure to secure tenant insurance puts her in breach of their rental agreement.

16. The tenant also acknowledged that she had been informed that she was in breach of her agreement, and I agree with the landlord that the text-message exchange with [REDACTED] does constitute a written notice, as required under s. 20.(2).
17. As the tenant had an ample amount of time between 29 July 2020, when the notice of the breach was issued, and 19 August 2020, when the termination notice was issued, to come into compliance with the terms of their rental agreement, I agree with the landlord that he was in a position to issue her a termination notice under this section of *Act*.
18. As the termination notice meets all the requirements set out in this section of the *Act*, it is a valid notice.

Decision

19. The landlord's claim for an order for vacant possession of the rental premises succeeds.
20. The tenant 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.

04 November 2020

Date

[REDACTED]
John R. Cook
Residential Tenancies Tribunal