

Residential Tenancies Tribunal

Decision 20-0293-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:06 pm on 18 August 2020 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 are sections 10 and 22 of the *Residential Tenancies Act, 2018* and rule 29 of the Rule 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. 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 respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents’ absence so long as she has been properly served. With her application, the landlord had submitted an

affidavit stating that the tenant was served with notice of the hearing, by registered mail, on 30 July 2020. The associated tracking history shows that that notice was delivered on 05 August 2020 and the tenant has had 12 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 commencing 01 January 2001 and a copy of that agreement was submitted with the landlord's application. The current rent is set at \$263.00.
8. The landlord stated that there have been ongoing issues with the tenant and the cleanliness of her apartment for quite some time. She stated that that social workers with [REDACTED] and other staff at [REDACTED] have been trying to work with the tenant to ensure that she keep her apartment in a liveable state, but those efforts have not been successful.
9. Accordingly, on 30 June 2020 the landlord issued the tenant a notice indicating that she was in breach of statutory condition 2 of the *Residential Tenancies Act, 2018* (Obligation of the Tenant) and that she was to come into compliance by having her unit cleaned within 7 days. A copy of that notice was submitted with the landlord's application. That notice also states that an inspection would be carried out on 08 July 2020.
10. The landlord testified that when that inspection was carried out on 08 July 2020, it was discovered that the tenant had not complied with the notice and that no cleaning had been carried out at all. The landlord submitted 14 photographs with her application showing the condition of the property on that date. These photographs show that there is garbage and debris all throughout the apartment and there is clothing found on most of the floors and on the furniture. The landlord also complained that there were numerous mattresses found on the floors outside of the bedrooms and she testified that drug paraphernalia was also found in the apartment.
11. As the tenant had not complied with notice issued to her on 30 June 2020, the landlord then issued her a termination notice on 09 July 2020, a day after the inspection. A copy of that notice was also submitted with the 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 15 July 2020.
12. The landlord stated that the tenant has not vacated as required and she is seeking an order for vacant possession of the rented premises.

Analysis

13. 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.*

14. I accept the landlord's testimony and evidence in this matter and I agree with her that, on 08 July 2020, when the landlord conducted the inspection of the rented

premises, the tenant was in breach of her rental agreement and in breach of her obligations as set out in statutory condition 2, quoted above. The photographs submitted by the landlord clearly show that the rental unit was in an unkempt and dirty state despite the fact that the landlord had given her a 7-day notice to clean the property.

15. As the tenant had not complied with the landlord's request to clean the apartment, and as the termination notice issued to her complies with the requirements set out in the *Act*, it is a valid notice.

Decision

16. The landlord's claim for an order for vacant possession of the rented premises succeeds.
17. 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.

Issue 2: Hearing Expenses

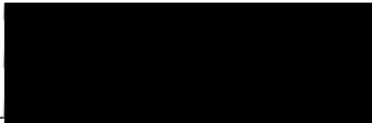
18. The landlord submitted a receipt showing that she had paid \$20.00 to file this application. As the landlord's claim has been successful, the tenant shall pay this hearing expense.

Summary of Decision

19. The landlord is entitled to the following:
 - An order for vacant possession of the rented premises,
 - The tenants shall pay to the landlord any costs charged to the landlords by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.
 - A payment of \$20.00.

28 August 2020

Date



John R. Cook
Residential Tenancies Tribunal