

Residential Tenancies Tribunal

Decision 20-0323-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:10 pm on 02 September 2020 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED] and [REDACTED], hereinafter referred to as “landlord1” and “landlord2”, respectively. The respondent, [REDACTED], hereinafter referred to as “the tenant”, also participated in the hearing.

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*.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord’s Position

6. Landlord1 stated that she had entered into a monthly rental agreement with the tenant commencing 21 September 2009 and a copy of that agreement was submitted with the landlord’s application. The current rent is set at \$263.00.

7. Landlord2 stated that there have been ongoing issues with the tenant and the cleanliness of her apartment. Accordingly, on 02 July 2020 landlord2 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 disposing all of household garbage and by cleaning up any animal waste caused by her pets. The notice also indicates that she is only permitted one pet in the unit.
8. That notice states that that an inspection would be carried out on 10 July 2020 but landlord2 claimed that he was denied access to the tenant's apartment on that date.
9. Landlord2 stated that he then issued the tenant a second notice, on 14 July 2020, identical to the first, again requiring her to dispose of the accumulated garbage and to clean up the animal waste in her apartment. This second notice states that an inspection will be carried out on 20 July 2020.
10. Landlord2 testified that when that inspection was carried out on 20 July 2020, it was discovered that the tenant had not complied with the notice. He stated that because the tenant had been keeping numerous animals in the apartment, the air quality was very poor. He also stated that the unit was in disarray and he claimed that there were patches of urine and feces on the floor from the tenant's animals.
11. In support of those claims, the landlord submitted 8 photographs with their application showing the condition of the property 20 July 2020. Landlord1 pointed out that these photographs show that there was garbage and debris throughout the apartment and that there was animal waste on the floors in several areas. Clothing is also seen on the floors and furniture.
12. She also complained that there was an accumulation of bulk garbage outside of the tenant's apartment.
13. As the tenant had not complied with notices issued to her on 02 July and 14 July 2020, landlord2 then issued her a termination notice on 28 July 2020 and 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 03 August 2020.
14. Landlord1 stated that the tenant has not vacated as required and she is seeking an order for vacant possession of the rented premises.

The Tenant's Position

15. The tenant acknowledged that she had received the 2 notices that she was to have her apartment cleaned and she also confirmed that she had received the termination notice that was delivered to her on 28 July 2020.

16. The tenant denied that that she had not allowed the landlord access to the unit on 10 July 2020 and she claimed that someone had entered on that date and had taken pictures of her apartment.
17. The tenant acknowledged that there were some items in the unit that she was in the process of trying to have them removed. She claimed that these items belonged to her ex-partner and she argued that she needs more time to have them removed as she has no one to help her.
18. Regarding the bulk garbage outside of the house, she also acknowledged that she had placed those items there for collection, but she stated that she only did so at the request of the landlord and she claimed that she is trying to do whatever the landlord requires of her.
19. With respect to the air quality in the apartment, the tenant claimed that the air quality was poor, not because of her animals, but rather because there is mold growing in her unit.
20. She also complained that it was unfair that the landlord was requiring her to remove her pets from the apartment and she contended that other tenants of the landlord also have more than 1 pet animal.

Analysis

21. 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.

22. I accept the testimony and evidence of landlord1 and landlord2 in this matter and I agree with them that, on 20 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 tenant had almost a month to clean her apartment.
23. As the tenant had not complied with the landlord's request to clean the apartment, and as the termination notice issued to her meets the requirements set out in the Act, it is a valid notice.

Decision

24. The landlord's claim for an order for vacant possession of the rented premises succeeds.
25. 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

26. As the landlord's claim has been successful, the tenant shall pay the landlord's hearing expense of \$20.00 for the costs of filing this application.


Summary of Decision

27. 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 landlord 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.

10 September 2020

Date



John R. Cook
Residential Tenancies Tribunal