

Residential Tenancies Tribunal

Decision 19-090-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:25 am on 28 February 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, was not present at the hearing. He was represented by [REDACTED] and a letter of authorization is on file.
3. The respondent, [REDACTED], was represented by [REDACTED] who also participated in the hearing. She is hereinafter referred to as “the landlord”.

Issues before the Tribunal

4. The tenant is seeking a determination of the validity of a termination notice issued to him on 30 January 2019.
5. The landlord is seeking an order for vacant possession of the rented premises.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this case is section 22 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

8. The landlord called the following witnesses
 - [REDACTED] – Maintenance Supervisor
 - [REDACTED] – tenant at rental complex

Issue 1: Vacant Possession

Relevant Submissions

The Landlord's Position

9. The tenant moved into the rental unit in April 2012. The tenant is an 88-year old man who suffers from urinary incontinence. The tenant's son, who lives at the rental unit with him and provides his care, represented him at this hearing.
10. The landlord stated that in 2017 she started receiving complaints from other residents at the complex about the smell of urine and feces coming from the tenant's apartment, in the hallway near his unit and in the laundry room. She also stated that the smell is even making its way into the adjoining apartments.
11. The landlord's maintenance supervisor, [REDACTED], was called as a witness and he corroborated the landlord's claim about the smell coming from the tenant's unit and he corroborated her claim that other residents at the complex had been complaining about that smell.
12. [REDACTED] testified that he had to visit the unit in September 2017 to carry out some repairs and he reiterated his claim that there was a smell of urine in the unit on that day and he claimed that the second bedroom at the unit was being used as a "garbage dump".
13. He further testified that the smell had been making its way into the apartment directly above the tenant's and he was required to seal the kitchen cabinets in that unit to help prevent the smell of urine entering. That unit belongs to [REDACTED] and she was also called as a witness. She further corroborated the landlord's claim that there was a smell of urine coming from the tenant's unit and that the smell was also entering her apartment, especially in her kitchen and bedroom. She also corroborated [REDACTED] claim that she needed to have her kitchen cupboards sealed and painted but she complained that the smell is still entering her unit. She testified that she has made between 10 and 15 complaints to the landlord about this matter.
14. With her application, the landlord submitted 4 notices she had issued to the tenant over the past 1.5 years requiring that he remove garbage from the rental unit and that he "thoroughly clean and sanitize" his apartment. These notices were issued on 08 September 2017 (NP #7), 17 July 2018 (NP #6), 05 September 2018 (NP #5) and 26 November 2018 (NP #4).

15. The landlord testified that with respect to the first 3 notices, she entered and carried out an inspection of the rental unit several days after these notices were issued. She claimed that in each case, it was evident that cleaning had been carried out at the unit and that the garbage had been removed. She also stated that the smell or urine had been “drastically alleviated” on those occasions, though it was still detectable.
16. The landlord claimed that even though there were improvements at the unit after these 3 notices were issued, things would eventually revert to how they were before and she would again start receiving complaints from the other residents at the complex. The landlord claimed that the tenant is not receiving the care he requires and argued that until he does receive appropriate care, things at the complex are not going to improve. She testified that she had personally contacted Eastern Health and an Elder Abuse Line in the hopes of securing appropriate homecare for the tenant, to no avail.
17. A final notice was issued to the tenant on 26 November 2018 (NP #4) again requiring the tenant to remove garbage from his unit and to have it cleaned. The landlord testified that she did not carry out an inspection at the unit after this notice had been issued, as she had with the previous 3 notices, but she did claim that the matter was briefly rectified and that the smell was no longer coming into the hallway and she received no further complaints from other tenants at that time.
18. However, in January 2019, the landlord claimed that she again started to receive the same sorts of complaints about the smell and she therefore issued the tenant a termination notice on 30 January 2019. A copy of that notice was submitted with the landlord’s application (NP #3). That notice was issued under section 22 of the *Residential Tenancies Act, 2018* (notice when tenant’s obligations not met) and it had an effective termination date of 06 February 2019.
19. The tenant has not vacated the rental unit as required and the landlord is seeking an order for vacant possession of the rented premises. The landlord expressed her wish at the hearing that this eviction process would be a catalyst for the tenant and the tenant’s son to seek and secure appropriate homecare.

The Tenant’s Position

20. The tenant’s representative conceded that his father suffers from urinary incontinence and that as a result there are times when there is a smell of urine at the unit, especially in the mornings. He denied, however, that there has ever been a smell of feces in the rental unit as the incontinence issue only has to do with urine.

21. The tenant's representative claimed that he does laundry on a daily basis to address the smell of urine but he complained that there is a problem with the laundry services in the building. He stated that the washing machines are oftentimes not working as they have been vandalized by other tenants at the complex and he pointed out that these machines were only finally repaired just 2 weeks ago.
22. The tenant's representative claimed that he was also trying to secure homecare for his father but he stated that he was so far unsuccessful and complained about how difficult it was to access the proper authorities at Community Services. The tenant's representative questioned the landlord's assertion that she was also looking to help his father and pointed out that she was in fact looking to have him evicted through her application. He also pointed out that the landlord has presented no evidence that his father has been neglected or abused.
23. With respect to the landlord's witness, [REDACTED], the tenant claimed that he had never been inside of his father's apartment and claimed that the 3 inspections were carried out by the landlord and a former employee.

Analysis

24. 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.*

25. Based on the landlord's testimony, and the testimony of her witnesses, I find that there is, from time to time, a smell of urine emanating from the tenant's apartment and it was not disputed that this is a result of the tenant's urinary incontinence. I also agree with the landlord that this issue can be seen as a violation of statutory condition 2, quoted above.
26. However, I was not persuaded that that on 30 January 2019 the landlord was in a position to issue a termination notice under section 22.(2) of the *Residential Tenancies Act, 2018*. According to that section of the *Act*, a termination notice may be issued when a tenant fails to abide by a notice, within 3 days after it was issued, to comply with statutory condition 2. It was the landlord's testimony at the hearing that in the days after the tenant had been issued the first 3 notices, he had in fact come into compliance with that statutory condition. Although the landlord had not carried out an inspection after the 4th notice was issued, she testified that it again appeared as if the tenant had complied with the notice as the smell of urine had dissipated. Accordingly, I have to conclude that the landlord was not in a position to issue a termination notice under subsection 22.(2) of the *Act* in the days after those 4 notices were issued.
27. Furthermore, although I also find it probable, based on the testimony of the landlord, that the issue of the smell of urine had again reared its head in late January 2019, the termination notice issued on 30 January 2019 cannot be considered valid as no evidence was presented showing that the tenant had first been issued a notice under section 22.(1) at that time.

Decision

28. The termination notice issued to the tenant on 30 January 2019 is not a valid notice.

29. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

07 March 2019

Date



John R. Cook
Residential Tenancies Tribunal