

Residential Tenancies Tribunal

Application 2024-0719-NL
Counter application 2024-745-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 1:48 p.m. on 23-October-2024.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", attended by teleconference.
3. The respondent and a counter applicant, [REDACTED], hereinafter referred to as "the landlord", attended by teleconference.
4. [REDACTED] was removed from the counterapplication as a respondent, as she is tenant's daughter and does not have landlord-tenant relationship with the counter applicant.

Preliminary Matters

5. Both parties have submitted affidavits (TT#1, LL#1). The tenant and the landlord have acknowledged that they received notice of the hearing more than 10 days prior to its scheduled date. In accordance with the *Residential Tenancies Act, 2018* this is good service, the hearing proceeded.
6. Initially, the agreement was a rent-to-own agreement, which commenced on 1-April-2021, but as of September-2023 it transitioned into a written month-to-month rental agreement. Rent is \$1600.00 per month and due on the first of each month. A security deposit was not paid.

Issues before the Tribunal

7. The tenant is seeking:
 1. Validity of termination notice.
8. The landlord is seeking:
 2. Vacant possession of rental premises.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
10. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 21: Notice where premises uninhabitable and Section 7-6 of the *Residential Tenancies Policy Manual*: Premises uninhabitable.

Issue # 1: Validity of termination notice. Vacant possession of rental premises.

Relevant Submission

11. The tenant submitted a copy of the termination notice issued by the landlord electronically on 23-July-2024 under the Section 21 of the *Act: Notice where premises uninhabitable*, with a termination date of 1-August-2024 (TT#2).

Landlord's Position

12. The landlord stated that the unit is filled with mold, particularly in the bathroom and the windows, necessitating the replacement of the windows and thorough cleaning of the entire house to remove all mold-affected items. The landlord also mentioned that the dishwasher had overflowed, contributing to the mold spread throughout the unit. Based on the extent of the mold, the landlord believes the property is uninhabitable and seeks to regain possession of the house to clean it and to repair.

Tenant's Position

13. The tenant is questioning the validity of the termination notice, asserting that she does not believe the premises are uninhabitable. The tenant stated that the issue with mold has been an ongoing problem since she moved into the unit in 2021. Additionally, the tenant referenced one house inspection conducted in May-2024, which indicated that the premises were suitable for habitation. Based on these factors, the tenant contends that the termination notice is not valid.

Analysis

14. The notice was served under Section 21 of the *Residential Tenancies Act, 2018* which states:

Notice where premises uninhabitable

21. (1) Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes statutory condition 1 set out in subsection 10(1), the tenant may give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises effective immediately.

(2) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where an action of, or a failure to act by, a tenant makes a residential premises unfit for habitation, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises effective immediately.

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

- (a) be signed by the person providing the notice;

(b) state the date 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

(c) be served in accordance with section 35.

15. According to the section 7-6 of the Residential Tenancies Policy Manual, rental premises may be considered uninhabitable when any of the following occurs:

- The landlord has not complied with laws respecting health, safety or housing applicable to the rental premises;
- An authoritative body (municipal government) orders that the premises be shut down for safety purposes;
- The landlord or the tenant causes utilities such as electrical power or water to be disconnected;
- Premises become flooded or a sewage system backs-up causing the premises to become uninhabitable.

16. Additionally, the *Policy* states that if an action of the tenant causes the premises to become uninhabitable (ie. due to non-payment of utilities, the electrical power to the premises is disconnected), the landlord may issue a termination notice that the rental agreement is terminated and the tenant is required to vacate the rental premises immediately.

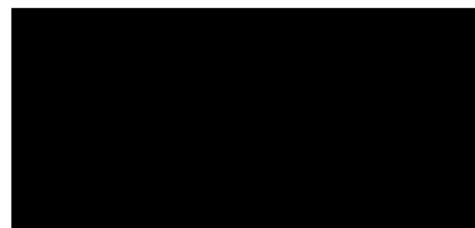
17. I accept the testimony of both parties. After reviewing the evidence and testimony present by the landlord, I find that it was not sufficient to meet the criteria set out in the *Policy*. As there was no indication of non-compliance with safety or housing laws, or any formal order declaring the premises uninhabitable, I find that the termination notice is not valid.

Decision

18. The termination notice issued by the landlord under the Section 21 of the Act: Notice where premises uninhabitable on 23-July-2024 to vacate the rental premises on 1-August-2024 is a not a valid notice.

October 25, 2024

Date



Oksana Tkachuk, Adjudicator
Residential Tenancies Office