

## **Residential Tenancies Tribunal**

Application 2024-0866-NL & 2024-0895-NL

Pamela Pennell  
Adjudicator

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### **Introduction**

1. Hearing was called at 1:49 p.m. on 29-October-2024.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents and counter applicants, [REDACTED] (tenant 1) and [REDACTED] (tenant 2), hereinafter referred to as “the tenants” attended by teleconference.
4. [REDACTED], witness for the landlord was called into the hearing.

### **Preliminary Matters**

5. The landlord submitted an affidavit with his application stating that he had served tenant 1 personally at the residential premises on 10-October-2024 (LL#1). Tenant 1 confirmed receipt of the document on that day and tenant 2 waived service. The tenants submitted a counter application and submitted an affidavit with their application stating that they also served the landlord personally at the residential premises on 11-October-2024 (TT#1). The landlord confirmed receipt of the document on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
6. There is a verbal month-to-month rental agreement which commenced on 1-August-2010. Rent is \$650.00 per month due on the 1<sup>st</sup> day of each month. The tenants disputed that rent is due on the 1<sup>st</sup> day of each month and testified that rent is due on the 26<sup>th</sup> day of each month. A security deposit was never paid.
7. The landlord amended the application to omit *rent paid* as rent is now up to date.

### **Issues before the Tribunal**

8. The landlord is seeking:
  - An Order for vacant possession of the rented premises.
  - Hearing expenses \$20.00

9. The tenants are seeking:

- Validity of the termination notices
- Compensation for inconvenience \$320.08
- Other \$2000.00
- Hearing expenses \$20.00

## Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

11. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Section 18: Notice of termination of rental agreement and Section 19: Notice where failure to pay rent. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Policy Manual*: Section 12: Recovery of costs.

### Issue # 1: Vacant Possession of the Rented Premises Validity of Termination Notices

#### Relevant Submissions

12. Both the landlord and the tenants submitted a copy of a termination notice given on a *Landlord's Notice to Terminate Early – Cause* form under Section 19: Notice where failure to pay rent. The notice is signed and dated for 7-September-2024, with a termination date of 18-September-2024 (LL#2). The tenants confirmed receipt of the notice on that date. The tenants also submitted a copy of a termination notice given to them on 25-August-2024 under Section 18: Notice of termination of rental agreement, to vacate on 26-November-2024 (TT#2).

#### Landlord's Positions

13. The landlord testified that he originally gave a standard termination notice on 25-August-2024 and followed up with a termination notice with cause on 7-September-2024 due to nonpayment of rent. The landlord testified that rent was outstanding in the amount of \$1300.00 for the months of August and September when he gave the termination notice on 7-September and payment for August was received on 9-September leaving an outstanding balance of \$650.00. The landlord submitted a copy of the rental ledger to support the claim (LL#3). See breakdown of the landlord's rental ledger below:

Rental Ledger 2024-0866 & 2024-0895-NL			
Date	Action	Amount	Total
July 31, 2024		Balance	\$0.00
August 1, 2024	rent due	\$650.00	\$650.00
September 1, 2024	rent due	\$650.00	\$1,300.00
Note: termination notice given on Sept 7 to vacate Sept 18			
September 9, 2024	Payment	\$650.00	\$650.00

## Tenant's Position

14. The tenants disputed that rent was in arrears and they are questioning the validity of both the termination notices. Tenant 1 stated that rent was due on 26<sup>th</sup> of each month and she stated that rent was paid in full on 9-September before the termination date of 18-September. See breakdown of the tenant's rental ledger below:

Rental Ledger 2024-0866 & 2024-0895-NL			
Date	Action	Amount	Total
August 25, 2024		Balance	\$0.00
August 26, 2024	rent due	\$650.00	\$650.00
September 9, 2024		Payment	-\$650.00
			\$0.00
Note: termination notice given on Sept 7 to vacate Sept 18			

15. The tenant's testified that the standard termination notice was given to them on 25-August, the day after they had a disagreement with the landlord regarding the signing of papers which involved the tenants moving some of their items out of the basement area as requested by the landlord. The tenants stated that the landlord gave that notice because they did not agree with his demands the previous day.

## Analysis

16. Section 18, of the *Residential Tenancies Act, 2018*, states:

### **Notice of termination of rental agreement**

*18. (2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises ...*

*(b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and*

.....

*(9) 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.*

17. Section 19 of the *Residential Tenancies Act, 2018* states:

### **Notice where failure to pay rent**

*19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),*

*(b) 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, and*

*the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.*

(4) *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.*

18. With regards to the date that rent is due each month, I asked the tenants how long they have been paying rent on the 26<sup>th</sup> of each month and they responded that rent has been paid on the 26th of each month for the past 5 years. Tenant 1 stated that she works with a family providing home care and they pay her once a month, on the 26<sup>th</sup> and she always pays the rent on that date. I asked the landlord if he has accepted rent on the 26<sup>th</sup> of the month for the past 5 years and he responded that he has as he has been very lenient and generous with the tenants to help them out. I asked the landlord if he has a rental agreement showing that rent is due on the 1<sup>st</sup> of each month, and he responded that he does not. I accept that the original verbal agreement between both parties involved having rent paid on the 1<sup>st</sup> of the month, however the landlord has accepted rent on the 26<sup>th</sup> of each month for approximately 5 years and as such, I find that the original verbal agreement has changed to an implied agreement that rent is due on the 26<sup>th</sup> of each month. Based on this finding, I accept that the landlord's rental ledger with an outstanding balance is not a valid rental ledger and I find that the tenant's rental ledger is a valid rental ledger showing no rental arrears, and for those reasons, I find that the termination notice with cause for nonpayment of rent is not a valid notice.

19. With regards to the standard termination notice issued to the tenants on 25-August-2024 and in Accordance with Section 18 of the Act as stated above, I find that the termination date of 26-November was not the last day of the rental period and for that reason, I find that the standard termination notice is not a valid notice. As the timeline for the standard termination notice is not met, making the notice invalid, the issue of retaliation will not be dealt with the purpose of this decision.

## Decision

- 20. The standard termination notice dated 25-August-2024 is not a valid notice.
- 21. The termination notice with cause dated 7-September-2024 is not a valid notice.
- 22. The landlord's claim for an *order for vacant possession of the rented premises* does not succeed.

## Issue # 2: Compensation for Inconvenience \$320.08

### Relevant Submission

23. The tenants testified that they were inconvenienced when tenant 1 experienced a medical emergency due to the actions of the landlord and they are seeking \$320.08 for their financial loss. The tenants submitted a copy of an inconvenience ledger to support the claim (TT#3). See breakdown of ledger below:

Inconveniences 2024-0866-NL & 2024-0895-NL		
Inconveniences / losses	Amount	Total
Ambulance bill	\$115.00	\$115.00
1 day of lost wages	\$100.00	\$215.00
Epi-pen	\$105.08	\$320.08

### Tenant's Position

24. Tenant 1 testified that on 30-July-2024 she experienced a medical crisis whereby she was transported to the hospital for medical care due to a strong scent entering her apartment from the upstairs unit through the ventilation system. Tenant 1 testified that she contacted the landlord by telephone immediately to ask if there was anyone home upstairs and she stated that the landlord confirmed that his spouse was at home. Tenant 1 testified that she went upstairs to ask the spouse to open her windows in hopes of clearing out the strong scent from the vents, and upon arriving back to her unit, she experienced a severe asthma attack whereby she found it difficult to breath. Tenant 1 testified that the landlord's spouse came to her unit at the same time showing concern for her health and when the paramedics arrived, tenant 1 stated that she heard the spouse tell the paramedics that she sprayed a scent into the vents to try to eliminate a musky odor coming from the vents. Tenant 1 testified that on route to the hospital via ambulance, she was given an epi-pen due to the severity of the incident. Tenant 1 stated that the landlord came to the hospital and gave her a ride to the drug store to pick up her prescribed epi-pen followed by a ride home. The tenants are seeking reimbursement of the ambulance bill and the cost of the epi-pen, as well as 1 day of lost wages following the incident. The tenants submitted a copy of receipts to support the claim (TT#4).

### Landlord's Position

25. The landlord disputed that he should be responsible for the tenant's inconveniences due to her medical incident which he stated happened on 21-August-2024. The landlord confirmed that he did receive a phone call from tenant 1 complaining about spray air freshener in the vents and when he arrived home, the ambulance was there. The landlord is not disputing that his spouse was cleaning the unit that day and using cleaning products, however he stated that the same products are used weekly to clean the house and there has never been an issue. The landlord testified that he has a son with asthma and a granddaughter with a lung disease and he nor his spouse would ever spray anything harmful within the unit or purposefully harm another person.

26. The landlord called a witness into the hearing, who testified that on the day of the medical incident she was house cleaning using the same products that she uses every week. I asked her what she used on that day, and she responded that she used Mr. Clean diluted with water. I asked her if she sprayed anything into the vent system that day and she responded that she sprayed a cashmere air freshener into the air but not directly into the

cold air duct. The witness testified that she showed the paramedics the spray bottle that she used in the event that it would assist them in treating the tenant.

## **Analysis**

Section 10(1) of the *Residential Tenancies Act, 2018* states: Statutory Conditions.

### **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:*

1. Obligation of the landlord –

- a) *The landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.*

27. Based on the receipts entered into evidence, I accept that the tenant's medical incident occurred on 30-July as stated by the tenant. I accept that the tenant had some type of respiratory issue on that day, however there is no medical to support exactly what the issue was or what caused the issue. The tenant stated that her breathing issues were caused by a scent coming into her unit through the ventilation system and the witness confirmed using a spray product on that day.

28. In order for this tribunal to award any financial loss to an applicant for a medical emergency, it would have to be determined that the respondent contravened the *Residential Tenancies Act, 2018* in some way causing the loss. In accordance with Section 10(1) (a) of the *Act* as stated above, the landlord has an obligation to comply with a law respecting health, safety or housing. I find that the actions of the landlord, did not contravene the *Act* and for that reason, I find that the landlord is not responsible to reimburse the tenants for any financial loss associated with her medical incident on 30-July-2024.

## **Decision**

29. The tenant's claim for *compensation for inconvenience* does not succeed.

## **Issue # 3: Other \$2000.00**

### Tenant's and Landlord's Position

30. The tenants are seeking \$2000.00 in compensation from the landlord for the actions of his spouse which caused tenant 1 to have a medical emergency on 30-July-2024, which she states has caused long lasting effects on her physical health. Tenant 1 stated that the landlords acted in bad faith and as a result she is no longer able to go out in public as the risk of inhaling perfume scents may cause her to have major breathing problems. The landlord disputed the claim.

## **Analysis**

31. This tribunal does not award for personal pain and suffering and as such, I find that the landlord is not responsible for the tenants claim for \$2000.00.

#### Decision

32. The tenant's claim for 'Other" does not succeed.

#### **Issue # 4: Landlord's Hearing Expenses \$20.00 Tenant's Hearing Expenses \$20.00**

33. Both the landlord and the tenant paid an application fee of \$20.00 to *Residential Tenancies* and submitted a copy of the receipts to support their claims. In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*, filing fees can be claimable costs but don't have to be. As both parties gained from this decision, I find that neither the landlord nor the tenants are responsible to pay for the other's hearing expenses.

#### Decision

34. The landlord's claim for *hearing expenses* does not succeed.

35. The tenant's claim for *hearing expenses* does not succeed.

#### Summary of Decision

36. The Director finds that:

- The standard termination notice dated 25-August-2024 is not a valid notice.
- The termination notice with cause dated 7-September-2024 is not a valid notice.
- The landlord's claim for an *order for vacant possession of the rented premises* does not succeed.
- The tenant's claim for *compensation for inconvenience* does not succeed.
- The tenant's claim for 'Other" does not succeed.
- The landlord's claim for *hearing expenses* does not succeed.
- The tenant's claim for *hearing expenses* does not succeed.

November 12, 2024

Date

  
Pamela Pennell, Adjudicator  
Residential Tenancies Office