

Residential Tenancies Tribunal

Application 2025-0004-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:56 p.m. on 24-February-2025.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.

Preliminary Matters

4. The tenant submitted an affidavit with his application stating that he had served the landlord with the notice of hearing personally at the residential premises by giving it to his spouse on 23-January-2025 (TT#1). The landlord confirmed receipt of the document. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There is a written month-to-month rental agreement which commenced on 5-September-2023. Rent is \$1000.00 per month due on the first day of each month. A security deposit of \$450.00 was paid on 5-September-2023 and is in the landlord’s possession.

Issues before the Tribunal

6. The tenant is seeking:
 - Validity of the termination notice.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 20: Notice where material term of an agreement contravened.

Issue # 1: Validity of the Termination Notice

Relevant Submission:

9. The tenant submitted a copy of a termination notice given under Section 20: Notice where material term of agreement contravened. The notice is signed and dated for 28-December-2024, with a termination date of 31-January-2025 (TT#2).

Tenant's Position:

10. The tenant testified that the landlord gave him a termination notice to vacate the unit due to the actions of a second tenant who occasionally smoked within the unit and due to parking issues. The tenant stated that the second tenant no longer resides in the unit and there hasn't been any smoking in the unit since long before her departure on 15-February-2025. The tenant stated that the termination notice had a written note on it from the landlord stating that there should be no smoking in the apartment whatsoever and that there is only parking space for one vehicle. The tenant stated that he was never advised of the parking issues, and he also stated that there is plenty of room in the driveway for his vehicle and his daughter's vehicle. The tenant does not believe that the landlord had a right to give him a termination notice under Section 20 of the *Act*, and he stated that he wishes to remain in the unit.

Landlord's Position:

11. The landlord testified that the termination notice dated 28-December-2024 was actually the second notice that he gave the tenant, and he stated that the previous termination notice was given on 13-December -2024 with a handwritten note attached stating that the tenant had broken the rental agreement. The landlord testified that he accepts that the second tenant vacated the unit on 15-February, however he testified that he still smells smoke from the downstairs unit whenever he enters his unit from the outside and he stated that the smoking combined with the parking issues were valid reasons to give the tenant a termination notice for breach of a material term.

Analysis

12. Section 20 of the *Residential Tenancies Act, 2018* states:

Notice where material term of agreement contravened

20. (2) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes a material term of a rental agreement, the landlord may give the tenant written notice of the contravention, and if the tenant fails to remedy the contravention within a reasonable time after the notice has been served, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises.

(3) Where the landlord gives a tenant notice under subsection (2) that a rental agreement is terminated, the notice shall be given

(b) not less than one month before the end of a rental period 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*

- (4) In addition to the requirements under section 34, a notice under this section shall*
- (a) be signed by the person giving 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 date by which the tenant is required to vacate the residential premises; and*
- (d) be served in accordance with section 35.*

13. In accordance with Section 20 of the *Act* as stated above, where a tenant contravenes a material term of a rental agreement, the landlord may give the tenant written notice of the contravention. I asked the landlord if he ever gave the tenant a written notice of the contravention and provide a reasonable time to remedy the situation and he responded that he did not. The landlord stated that when he gave the initial termination notice on 13-December he wrote the reasons for the notice on the back of the form, and he submitted a copy of that notice (LL#1).
14. In accordance with Section 20 of the *Act* as stated above, the landlord was required to give the tenant written notice of the contravention and if the tenant fails to remedy the contravention in a reasonable time after the notice has been served, the landlord may then give a termination notice. I accept that the landlord gave a written notice on 13-December stating that the tenant broke the terms of the rental agreement; however, I find that the landlord failed to identify what the contravention was, and he failed to give the tenant a timeframe to remedy the contravention. For those reasons, I find that the termination notice dated 28-December-2024 is not a valid notice.

Decision

15. The termination notice dated 28-December-2024 is not a valid notice.

February 25, 2025

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office