

Residential Tenancies Tribunal

Application 2025-0120-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 2:00 p.m. on 27-February-2025.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach him by telephone at the start of the hearing. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent’s absence so long as he has been properly served. The landlord submitted an affidavit with his application stating that he had served the tenant with the notice of hearing personally at the residential premises on 5-February-2025 (LL#1). In accordance with the *Residential Tenancies Act, 2018* this is good service. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.
5. There is a written month-to-month rental agreement which commenced on 1-April-2019. Rent is \$725.00 per month due on the first day of each month. A security deposit of \$372.00 was paid in April 2019 and is in the landlord’s possession.

Issues before the Tribunal

6. The landlord is seeking:
 - Vacant possession

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 are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory Conditions, Section 20: Notice where material term of an agreement contravened, Section 21: Notice where premises uninhabitable and Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Policy: Section 7-6: Premises uninhabitable*.

Issue # 1: Vacant Possession

Relevant Submission:

9. The landlord submitted a copy of a termination notice given under Section 20: Notice where material term of agreement contravened, Section 21: Notice where premises uninhabitable and Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy (LL#2). The notice was signed and dated for 31-October-2024 with a termination date of 30-November-2024.

Landlord's Position:

10. The landlord testified that he gave the tenant a termination notice under 3 different sections of the *Act* and he is seeking vacant possession.
11. With regards to Section 20: notice where material term of agreement contravened, the landlord stated that the tenant is responsible for the heat to the unit and failure to provide heat is a breach of a material term. The landlord testified that he has made several visits to the unit whereby there was absolutely no heat to the unit, and he testified that he has spoken to the tenant about this issue on several occasions.
12. With regards to Section 21: notice where premises uninhabitable, the landlord stated that the absence of proper heat especially during the winter months makes the unit uninhabitable as it compromises his unit and poses serious risks to the pipes.
13. With regards to Section 24: notice where tenant contravenes peaceful enjoyment and reasonable privacy, the landlord stated that the tenant has interfered with the peaceful enjoyment and reasonable privacy of the other tenant who resides in the upstairs unit, and he provided 2 *Police* file numbers to support the claim.

Analysis

14. 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

15. 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 to maintain the heat at a certain temperature and he responded that he did not. The landlord stated that he had several conversations with the tenant asking him to maintain a certain heat within the unit during the winter months. I find that the landlord failed to give the tenant written notice of the contravention and I also find that the landlord would have no way of knowing what the temperature in the unit was at times he was not there. For those reasons, I find that the termination notice under Section 20 of the *Act* is not a valid notice.

16. Section 21 of the *Residential Tenancies Act, 2018* states:

Notice where premises uninhabitable

21.(2) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where an action of, or 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.

17. Section 7-6 of the *Residential Tenancies Policy* states:

Premises Uninhabitable

A 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.*

18. In accordance with Section 21 of the *Act* and Section 7-6 of the *Policy* as stated above, I find that the landlord failed to show that the tenant has made the unit uninhabitable in any way and he failed to show that an authoritative body ordered the premises to be shut down for safety reasons. For those reasons, I find that the termination notice given under Section 21 of the *Act* is not a valid notice.

19. Section 24 of the *Residential Tenancies Act, 2018* states:

Notice where tenant contravenes peaceful enjoyment and reasonable privacy

24. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 7(a) set out in subsection 10(1), 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 specific date not less than 5 days after the notice has been served.

20. The relevant subsections of Section 10 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 the 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:

7. Peaceful enjoyment and reasonable privacy –

(a) The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.

21. The landlord failed to provide details surrounding the events that had occurred between the respondent and another tenant who resides in the upstairs unit. The landlord could provide 2 *Police* file numbers, however he was not privy to the events that took place and I asked him if the upstairs tenant had ever reached out to him to say that the respondent was interfering with his peaceful enjoyment and reasonable privacy and he responded that he has not. In accordance with section 10 and 24 of the *Act* as stated above, I find that the landlord failed to show that the tenant unreasonable interfered with the rights and reasonable privacy of the other tenant in the unit and for that reason, I find that the termination notice given under Section 24 of the *Act* is not a valid notice.

Decision

22. The termination notice dated 31-October-2024 is not a valid notice.

February 28, 2025

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office