

Residential Tenancies Tribunal

Application 2025-0122-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 11-March-2025 at 1:49 pm.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, was represented at the hearing by [REDACTED], who attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, also attended via teleconference.
4. Also attending on behalf of the landlord were [REDACTED] and [REDACTED].
5. Also attending on behalf of the tenant were [REDACTED] and [REDACTED].

Preliminary Matters

6. The tenant acknowledged that she was served notice of the hearing more than ten days in advance.

Issues before the Tribunal

7. Should the landlords' claim for an order of vacant possession succeed?

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act*, 2018 (the *Act*).
9. Also considered and referred to in this hearing are s.20(2-4), s.24, and s.34 of the *Act*, which reads as follows:

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 tenant gives a landlord notice under subsection (1) or the landlord gives a tenant notice under subsection (2) that a rental agreement is terminated, the notice shall be given

(a) not less than 7 days before the end of a rental period where the residential premises is rented from week to week; and

(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 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.

Requirements for notices

34. A notice under this Act shall

(a) be in writing in the form prescribed by the minister;

(b) contain the name and address of the recipient;

(c) identify the residential premises for which the notice is given; and

(d) state the section of this Act under which the notice is given.

Issue 1: Vacant Possession

10. In order to receive an order for vacant possession, a landlord must have first issued a valid termination notice. To be valid, a termination notice must comply with all relevant sections of the *Act*. The landlord provided a copy of a termination notice (LL#11) which they say they served on the tenant.
11. S. 20(2) of the *Act* provides that where a tenant breaches a material term of the rental agreement a landlord may give a tenant written notice requiring that they comply with the term. Only where the tenant fails to comply with this notice may a termination notice be issued under s. 20(2). In the present case, the landlord testified that they issued written notices on both 30-April-2024 (LL#2) and 16-July-2024 (LL#3). These are notices that the tenant is in breach of the section of the rental agreement labeled "Occupation of Premises, 10(a)," which prohibits anyone other than the tenant from residing at the premises. The lease (LL#12) specifies that failure to comply with this condition specifically "will disqualify the tenant from continued occupancy of the leased premises," so I am satisfied that the term is material.
12. The tenant and her witness did not dispute that a person other than the tenant resided at the premises for ten months, with their last overnight stay being on or about 20-February-2025. They did not dispute that the occupant was present when the notices were given.
13. The tenant argued that the other occupant's stay was necessary to provide for the tenant. They also said that they refused to go to a shelter and did not want to be homeless. With respect to the difficulties faced by the tenant and the occupant, these considerations are not relevant to whether or not the tenant breached a material term of the rental agreement.
14. LL#11 was issued on 29-November-2024 and gives a move out date of 31-December-2024. This is not less than one month before the end of the rental period. It therefore complies with s. 20(3). The breach had not been remedied at this time.
15. LL#11 is in writing but is not in the form prescribed by the minister. This seems to be in violation of s. 34(a) of the *Act*. However, s. 22(f) of the *Interpretation Act*, RSNL 1990 C I-19, states that where a form is prescribed, deviations from the form not affecting the substance nor calculated to mislead, do not invalidate the form used. Therefore, not being in the form prescribed by the minister does not necessarily render LL#11 invalid. It contains the name and address of the recipient. It identifies the residential premises it regards. It states that it is given under s. 20 of the *Act*. It therefore complies with s. 34.
16. LL#11 was signed by the purpose who provided it. It was given before the first day of a rental period. It states the date on which the tenancy is to terminate, and this date is the final day of the rental period. The landlord testified that the notice was served on the tenant by posting it on her door, in accordance with s. 35(2)(c) of the *Act*. A picture was provided of the notice attached to the door (LL#14).
17. LL#11 complies with all relevant sections of the *Act* and is therefore valid. The fact that the tenant remedied the breach after the termination date is irrelevant.

Decision

18. A valid termination notice was issued which gives a move out date of 31-December-2024. The rental agreement terminated on that date. Insofar as the tenant is still residing at the premises, she is doing so illegally.
19. The landlord's application for an order of vacant possession succeeds.

Summary of Decision

20. The tenant shall vacate the premises immediately.
21. The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sherriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession.
22. The landlord is granted an order of possession.

24-March-2025

Date


Seren Cahill
Residential Tenancies Office