

Residential Tenancies Tribunal

Application 2025-0276-NL & 2025-0277-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 24-April-2025 at 1:46 pm.
2. The applicant, [REDACTED], hereinafter referred to as the tenant, attended via teleconference.
3. The respondent and counter-applicant, [REDACTED], hereinafter referred to as the landlord, also attended via teleconference.

Preliminary Matters

4. The landlord testified and provided an affidavit of service (LL#1) to the effect that he had the tenant served with notice of the hearing personally on 12-April-2025 at approximately 2:00 pm. I was satisfied that the tenant was properly served and proceeded with the hearing.
5. The tenant applied to determine the validity of a termination notice and the landlord applied for an order of vacant possession based on said termination notice. As a valid termination notice is a prerequisite to receiving an order of vacant possession, the tenant's issue is wholly subsumed by the landlord's. For that reason both issues are dealt with together and service of the tenant's claim was not addressed.

Issues before the Tribunal

6. Should the landlord's claim for an order of vacant possession succeed?

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 (the *Act*).
8. Also considered and referred to in this hearing are s.24 and s.34 of the *Act*, which read as follows:

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 specified date not less than 5 days after the notice has been served.

(2) 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.

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

9. 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#2) they say they provided to the tenant.
10. The termination notice is written in the form prescribed by the minister. It contains the name and address of the recipient. It identifies the residential premises for which it is given. It states that it was issued under s. 24 of the *Act*. It therefore complies with s. 34.
11. The notice was signed by the landlord. It states the date on which the rental agreement is to terminate and the tenant is required to vacate the premises. It was served on the tenant personally in accordance with s. 35(2)(a) of the *Act*. It therefore complies with s. 24(2) of the *Act*.
12. The notice was issued on 1-April-2025 and gives a termination date of 7-April-2025. It therefore complies with the timeline requirements under s. 24(1) of the *Act*. The only remaining issue is whether the tenant contravened statutory condition 7(a) as set out in s. 10(1) of the *Act*, reproduced below:

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.

13. In other words, did the tenant unreasonably interfere with the rights or reasonable privacy of the landlord in the premises or the property of which they form a part?

14. The landlord testified that the tenant has been smoking in the premises, contrary to the rental agreement. The tenant denies this. He says he has only smoked outside. He agreed that there were cigarette burns inside the premises but that these were caused by a woman who no longer resides at the premises. The landlord provided a number of photos (LL#3) showing evidence of smoking inside, including a bottle stuffed with cigarette butts.

15. Having considered the totality of the evidence, I find I do not believe the tenant's testimony on a balance of probabilities. It is illogical and unlikely. In any event, I note that the tenant is accountable for the actions of a person whom they allow into the premises. I accept that the tenant smoked inside the premises, and that this is contrary to the rental agreement. However, this is not the standard specified by section 24.

16. There is a section of the *Act* which allows the landlord to evict a tenant for breaching a material term of the rental agreement, s. 20(2). There is also a section which allows the landlord to evict a tenant for failure to repair damage they have caused to the premises, s. 22. These have their own distinct requirements, separate from s. 24. The mere existence of these suggestions suggests that merely damaging the property or breaching a material term of the rental agreement do not necessarily constitute unreasonable interference with the landlord's rights. Otherwise, they would be redundant. Without something more, smoking in the premises is not unreasonable interference with the landlord's rights.

17. The landlord was able to point to other examples of what he says was the tenant interfering with his rights. He testified that the tenant's toilet flooded twice in a short period and there was a foul smell and suggests this must have been the result of the tenant flushing something inappropriate. I disagree with his inference. There are other possibilities that are just as likely. I am not satisfied that the tenant caused the toilet backups. He also testified that the tenant or a person the tenant allowed on the premises left illegal drug paraphernalia on the exterior of the premises (LL#4). I do not find this to be interference with the landlord's rights as it does not interfere with the landlord's ability to enjoy the use of the non-rented portion of the property.

18. Finally, the landlord alleges that the tenant is only entitled to one parking space but for a period of time parked two vehicles in the driveway. He said he remedied this by installing a spike deterrent in the portion of the driveway to which the tenant is not entitled. This does constitute interference with the landlord's rights insofar as it disrupted the landlord's ability to park his vehicle, but it does not constitute unreasonable interference. Several days of extra parking is a reasonable inconvenience.

19. The landlord has failed to demonstrate that the tenant unreasonably interfered with his rights or reasonable privacy. The termination notice is therefore invalid. The landlord's application for an order of vacant possession fails.

Decision

20. The termination notice dated 1-April-2024 is invalid.

30-April-2025

Date



Seren Cahill
Residential Tenancies Office