

Residential Tenancies Tribunal

Application 2025-0368-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 27-May-2025 at 9:15 am.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, was represented at the hearing by [REDACTED] and [REDACTED], who attended via 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 them 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 the 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 they have been properly served. The landlord provided a sworn affidavit (LL#1) stating that they served the tenant notice of this hearing on 6-May-2025 for this hearing date via prepaid registered mail, tracking number [REDACTED]. I checked the tracking number at the time of the hearing and it showed that the notice was delivered successfully. Proof of service was also provided. 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 their absence.

Issues before the Tribunal

5. Should the landlord's request for an order of vacant possession be granted?

Legislation and Policy

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

7. Also considered and referred to in this decision are sections 21 and 34 of the *Act*, as follows:

Notice where premises uninhabitable

21. (1) Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes statutory condition 1 set out in subsection 10(1), the tenant may give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises effective immediately.

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

(3) In addition to the requirements under section 34, a notice under this section shall

- (a) be signed by the person providing the notice;
- (b) state the date 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
- (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 of the Rental Premises

8. In order to receive an order of vacant possession, a landlord must demonstrate they have provided the tenant with a valid termination notice. The landlords provided a notice labelled LL#2.
9. LL#2 is in writing in the form prescribed by the minister. It contains the name and address of the recipient. It identifies the residential premises for which it was given. It states it is issued under s. 21(2) of the *Act*. It therefore complies with s. 34 of the *Act*.
10. LL#2 was signed by a representative of the landlord who provided it. It states the date on which the tenant is required to vacate the premises, 14-April-2025. It was served on the tenant by posting it on their apartment door in accordance with 35(2)(c). It therefore complies with s. 21(3) of the *Act*.

11. The only remaining question, under s. 21(2) of the *Act*, is whether or not an action of the tenant or a failure to act by the tenant made the residential premises unfit for habitation.
12. The landlord's representatives testified that they inspect premises twice a year. They say that on one of these inspections, 9-April-2025, they attended the premises in question and noticed several problems. They saw that the room was littered throughout with garbage bags, grocery bags, and litter and observed a strong foul odor. They did a follow-up inspection on 14-April-2025 and observed nothing had changed. They state there was a fruit fly infestation present at that time, and that they were concerned about health and safety. As well as hygiene concerns, they felt that the clutter would impede or prevent emergency response and potentially attract rodents.
13. Photos were provided (LL#3).
14. Normally, mess alone would not render a premises "uninhabitable." However, based on the testimony and photos provided, I am satisfied that this is an exceptional case. The photos in particular demonstrate premises that have been rendered unsafe for human habitation.
15. LL#2 complies with all relevant sections of the *Act* and is therefore valid.

Decision

16. The valid termination notice gave a move out date of 14-April-2025. The tenancy agreement ended on that date. Insofar as the tenants still occupy the premise, they are doing so illegally. The landlord's application for an order of vacant possession succeeds.

Summary of Decision

17. The tenant shall vacate the premises immediately.
18. 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.

11-July-2025
Date


Seren Cahill
Residential Tenancies Office