

Residential Tenancies Tribunal

Application 2025-0485-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:16 a.m. on 29-July-2025.
2. The applicant, The Estate of [REDACTED], c/o [REDACTED] (executor), 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 able to reach them by telephone at the start of the hearing at which time he declined participation. 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 the 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 this application stating that he had the tenant served with the notice of hearing personally at the residential premises on 14-July-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-June-2024. Rent is \$1200.00 per month, due on the first day of each month. A security deposit of \$600.00 was paid on 23-May-2024.

Issues before the Tribunal

6. The landlord is seeking:
 - Vacant possession of the rented premises

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* and Section 24; *Notice where tenant contravenes peaceful enjoyment and reasonable privacy*.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submission

9. The landlord submitted a copy of a termination notice that was given to the tenant on a *Landlord's Notice to Terminate Early – Cause* form (LL#2). The notice was signed on 21-May-2025 under Section 24; *Notice where tenant contravenes peaceful enjoyment and reasonable privacy* to vacate on 31-May-2025.

Landlord's Position

10. The landlord testified that the tenant has interfered with the peaceful enjoyment and reasonable privacy of the other tenants who reside on the top floor of the unit. The landlord testified that the tenant smokes in the unit and the tenants upstairs have previously complained to his late dad and most recently to him about the smell entering their unit through the vent system. The landlord also testified that there was a party at the unit on 31-December-2024 which resulted in a *Police* presence and damage to the unit.

Analysis

11. 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.

12. 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.

13. The termination notice was given on 21-May-2025 under Section 24; *Notice where tenant contravenes peaceful enjoyment and reasonable privacy* to vacate on 31-May-2025. The termination date was given not less than 5 days after the notice was served which meets the requirements as set out in the *Act*. I find that the termination notice is a

valid notice from a timeline perspective, however without admissible evidence the landlord failed to show that the tenant contravened statutory condition 7 as outlined in Section 24 of the *Act* as stated above. I asked the landlord if he or his late dad had ever given the tenant a written notice to stop smoking in the unit and the opportunity to remove the smell of smoke from the unit and he responded that he had not and he was unsure if his late dad ever had. I also asked the landlord if he had any witness statements to collaborate his testimony regarding the incident on 31-December and he responded that he had not. For those reasons, I find that the landlord was unable to support the claim that he or his late dad had dealt with the smoking incident properly and he failed to show that the tenant has unreasonably interfered with the peaceful enjoyment and privacy of the other tenants residing at the unit and for those reason, I find that the termination notice is not a valid notice.

Decision

14. The termination notice given on 21-May-2025 is not a valid notice.
15. The landlord's claim for vacant possession of the rented premises does not succeed.

July 29, 2025

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office