

## Residential Tenancies Tribunal

Applications: 2022 No. 61 NL  
2022 No. 84 NL

Decision 22-0061-00

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:18 AM on 30 March 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord" participated.
3. The respondent, [REDACTED], hereinafter referred to as "■", also participated. The other respondent, [REDACTED], hereinafter referred to as "■", did not participate.

### Issues before the Tribunal

4. I determined at the hearing that this application concerned 2 separate tenancies, one with ■, and the other with ■ and her spouse. I therefore have split the landlord's application and have determined that he is seeking the following:

Regarding ■'s tenancy:

- An order for a payment of rent in the amount of \$3750.00; and
- An order for vacant possession of the rented premises.

Regarding ■'s tenancy:

- An order for payment of \$5968.00 in compensation for damages, and
- An order for vacant possession of the rented premises.

5. ■ is seeking a determination of the validity of a termination notice issued to her on 09 January 2022.

## **Legislation and Policy**

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this case is sections 10, 18, 19 and 24 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

## **Preliminary Matters**

8. █ was not present or represented at the hearing and I was not able to reach her by telephone. 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 submitted an affidavit with his application stating that he had sent the application and notice of the hearing electronically to █, by using the phone number and e-mail address he had on file. The notice were sent to █ on 15 February 2022 and visual proof of service was provided with his application. As █ was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.
9. The landlord called the following witness:
  - █ ("█") – the landlord's spouse

### **Issue 1: Rent Owed by SL - \$3,750.00**

#### **Relevant Submissions**

##### The Landlord's Position

10. The landlord testified that he entered into a verbal agreement with █ in the spring of 2021 for use of one bedroom in the upstairs of the rental premises. The agreed rent was set at \$750.00 per month. No security deposit was paid.
11. Sometime over the summer of 2021, █'s daughter, █, along with her husband and children, moved into the rental property. In August 2021, it was agreed that █ would rent the remainder of the house, also at a rate of rent of \$750.00.

12. The landlord testified that he received the rent for the months of September, October, November and December 2021, as agreed, but he has received no payments for January, February or March 2022.
13. The landlord calculates that ■ owes him \$3750.00 for those 3 months.

#### SL's Position

14. ■ acknowledged that she had not paid rent for the past 3 months.

#### **Analysis**

15. There is no dispute that ■ had not paid her rent for January, February or March 2022. As the landlord is also seeking an order for vacant possession of the rented premises, I find that he is entitled to payment of rent to the date of the hearing and a per diem thereafter.
16. I calculate the amount owing to be \$2239.80 (\$1,500.00 owing for the period ending 28 February 2022 and \$739.80 for March 2022 (\$750.00 per month x 12 months = \$9,000.00 per year ÷ 365 days = \$24.66)).

#### **Decision**

17. The landlord's claim for a payment of rent succeeds in the amount of \$2239.80.
18. ■ shall pay a daily rate of rent in the amount of \$24.66, beginning 31 March 2022, and continuing to the date the landlord obtains vacant possession of the rented premises.

#### **Issue 2: Vacant Possession of Rented Premises: SL's Rent Arrears** **Issue 3: Determination of the Validity of Termination Notice**

#### **Relevant Submissions**

##### The Landlord's Position

19. The landlord submitted a copy of a termination notice (L5) with his application which he stated was sent to ■, by e-mail and text-message, on 09 January 2022.
20. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 22 January 2022.
21. The landlord stated that ■ has not vacated the rented premises as required and he is seeking an order for vacant possession.

## █'s Position

22. The tenant acknowledged receiving the termination notice.

## **Analysis**

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

### ***Notice where failure to pay rent***

***19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),***

...

***(b) 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, and***

*the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.*

*(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.*

24. According to the landlord's testimony, on 09 January 2022, the day the termination notice was issued, █ was in rental arrears in the amount \$750.00 and had been in arrears since the beginning of that month. No rent payments were made since that notice was issued.
25. As the notice meets all the requirements set out in this section of the Act, and as it was properly served, it is valid.

## **Decision**

26. The termination notice issued to █ on 09 January 2022 is a valid notice.
27. The landlords' claim for an order for vacant possession of the premises rented by █ succeeds.

28. █ shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

#### **Issue 4: Vacant Possession of Rented Premises: █'s Interference with Peaceful Enjoyment**

##### **Relevant Submissions**

###### The Landlord's Position

29. The landlord submitted a second termination notice with his application (L#6), which he stated he had sent to █ on 13 January 2022. This notice was issued under section 24 of the *Residential Tenancies Act, 2018* (notice where tenant contravenes peaceful enjoyment and reasonable privacy) and it had an effective termination date of 21 January 2022.

30. Regarding reasons for issuing the termination notice, the landlord testified that this was for reasons ranging from noise, additional persons residing on premises, smoking and consumption of drugs (marijuana) in the premises, pets, leaving garbage outside and blocking the windows of the downstairs tenant, alleged theft related to work on the premises and physical assault for which the Royal Newfoundland Constabulary was called.

31. The cited reasons were reviewed during the hearing and a written summary of each major issue was provided by the landlord (L#7):

32. **Assault:** The landlord testified that he provided notice to the █ in August 2021 that he would be entering the rental premises on 29 August 2022 to complete necessary repairs to the sinks, measure windows and install a new dryer. With respect to what happened on that day, the landlord submitted record of an Assistance to General Public police file that had been created on that day (L#7). The landlord testified that he was sworn at and physically assaulted and that he remained in his vehicle on the property, where the abuse apparently continued, until the police arrived.

33. **Alleged Theft:** The landlord wrote (L#7) that he was unable to replace the bathroom sink as required on 29 August 2022 and this associated with subsequent water damage in the basement apartment. The landlord testified that he paid the tertiary tenant \$660.00 for cleaning of the downstairs apartments in response to this water event.

34. Related to this event, the landlord submitted pictures of text messages between himself and the █ (L#21). These message depict a back and forth regarding the purchase, delivery and installation of a bathroom vanity. The landlord testified that he e-transferred \$100.00 to █ so that she could buy the vanity and have it

installed. However, the vanity was said to have never been purchased or installed.

35. **Noise:** The landlord submitted two video files that were said to have been captured from within the basement apartment at the rental premises (L# 9 L#10). Digital properties of these video files indicate they were created near 11:00PM on 20 January 2022. Both videos depict loud persistent noise from the floor above. Screenshots of texts from the basement tenant were also provided by the landlord (L#11 L#12) attributing noise and impacted sleep to the upstairs tenants. Related to the alleged noise, a picture of a black car parked diagonally across the driveway of the rental premises was provided (L#13). The landlord stated that the home is a R2000 home with sound proofing and the basement apartment is a registered apartment with a sound insulation barrier and sound channeling.
36. **Garbage outside of basement tenant windows:** The landlord submitted additional pictures of text messages from the basement tenant sharing pictures of cigarette butts on the ground (L#15) and pictures of notable garbage outside of basement windows (L#16). The landlord further testified that he had the local fire prevention officer attend the rental premises because he was concerned the placement of this garbage presented a life and safety risk to the basement tenant in case she had to vacate the basement apartment suddenly through the window due to a fire.
37. The landlord's witness, ■■■, indicated that she attended the property for four days in December 2021 to complete necessary repairs on the property with the landlord. She testified that she observed one of the upstairs tenants smoking within the property and that she noted the smell of marijuana from the back of the rental premises. ■■■ also indicated that she slept in the basement apartment of the rental premises for those four days and did not sleep during that time because the upstairs apartment was a "very busy place" with "lots of action" and that the black vehicle was always moving. Regarding the two car driveway at the rental premises, ■■■ indicated that she parked on the side of the road because there was no room in the driveway.
38. The landlord stated that ■■■ has not vacated as required and he is seeking an order for vacant possession.

#### ■■■'s Position

39. ■■■ testified that the landlord attended the rental premises on 29 August 2022 for the purposes of changing the locks. She further indicated that she had no knowledge of the documented assault because she was at work.
40. Regarding the marijuana smell, ■■■ indicated that it is smoked in the garage at the back of the house. Regarding cigarette smoking inside, SL indicated that she initially smoked in the house but has not smoked inside since she was informed that it was not permitted. She also reported that any butts left in the yard at the

rental premises have been cleaned up. Regarding the alleged noise, tenant 1 indicated that her 5 year old child is a very active child.

41. Regarding the alleged parking issues during ■■■'s attendance at the rental premises, ■■■ indicated that the landlord had parked his car and a dump truck at the property. The landlord reported that this "dumpster" was required for renovations at the rental premises.
42. Regarding the noise video, ■■■ reported that the videos were taken while she was at work and her daughters were in bed so her family was not responsible for the noise.

## **Analysis**

43. Statutory condition 7.(a), set out in section 10.(1) 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 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.***

and according to section 24 of this Act:

### ***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.

44. Regarding the termination notice sent to █ for "interference", there was a significant amount of evidence submitted by the landlord that was not necessarily relevant to the legal justification he claimed for termination of her tenancy. I will focus only on the relevant evidence in my review of the legal justification and completeness of the termination notice sent to the tertiary tenant.

45. Documented evidence was provided by the basement tenant of the residential premises attesting to the noise, garbage and interruptions experienced as a result of living beneath the upstairs tenants, all of which could be considered more significant than the daily noises and inconveniences of living in a basement apartment. For instance, the basement resident could expect to hear children running throughout the day, but reasonably anticipate access to a quiet environment during regular sleeping hours of 10pm – 8am. Likewise, a basement tenant would be expect adjust to the life style and schedule of the upstairs tenant, but this becomes difficult the alleged "constant" coming and going and vehicle noise said to be attributed to the upstairs tenants.

46. However the basement tenant did not testify during the hearing directly about her experience. Consequently, the majority of "evidence" submitted by the landlord on behalf of the basement tenant was more hearsay than fact.

47. However, I accept the testimony of the landlord concerning the assault that he experienced and the abusive he has received from the tenant. That testimony is corroborated by the submitted police report. I also accept the landlord's testimony that █ has continued to be verbally abusive to him since that assault took place.

48. That sort of behaviour is clearly unreasonable and it is antisocial, and I find that it interfered with the landlord's right to visit the unit to carry out regular maintenance and to deal with other tenant related matters. Accordingly, I find that the landlord was in a position, on 13 January 2022, to issue █ a termination notice under this section of the Act.

## **Decision**

49. The landlord's claim for an order for vacant possession of the premises rented by █ succeeds.

50. █ shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

## Issue 5: Compensation for Damages - \$5968.00

### Relevant Submissions

#### The Landlord's Position

51. The landlord stated that the tenants caused damages to the property during their tenancy and he submitted the following breakdown of anticipated repair costs (L#18):

• Kitchen floor.....	\$828.00
• Repaint house.....	\$2600.00
• Repair converted garage .....	\$590.00
• Repairs not completed.....	\$700.00
• Loss of rental income.....	\$1250.00
• Total .....	\$5968.00

52. The landlord testified that he observed significant damage in the linoleum floor of the rental premises when he visited on 29 August 2021 and advised that it would need to be replaced. He also requested compensation for painting the interior of the house because the tenants had smoked inside which is contrary to the original rental agreement.

53. The landlord testified that the tenants converted the garage to a bedroom space with flooring, partial walls and light fixtures. He was seeking costs to remove and dispose of all conversion related materials. Regarding use of the garage space as a bedroom, the landlord expressed concern with non-compliance of the space with municipal bylaws and worried about liability for improper use coming back to him.

54. Regarding costs claimed for supposed repair work allegedly not completed by [REDACTED], despite having been paid by the landlord, the landlord submitted record of three e-transfers totalling \$460.00 (L#20).

55. The landlord indicated the rental premises was built in 1992 and that he has owned the property since it was built. He testified that the interior was last painted approximately 3 years prior. He also testified that the linoleum floor in question was also last replaced three years ago.

56. The landlord provided no pictures or documented quotes indicating how exactly he arrived at the necessary fees for the work that is said to be required. When asked how he arrived at the anticipated cost amounts for damage, the landlord testified that he has been a general contractor for 35 years and that he quoted the costs based on knowledge of how to price such work.

57. The landlord further indicated that he did not complete a move in condition inspection report when ■ moved in.
58. The landlord rescinded his claim for \$1,250 in rent lost due to repairs from the tenant during the hearing.

#### SL's Position

59. ■ testified that the alleged damage to the floor was caused by the previous tenants and that it existed prior to ■ moving in. She further testified that the paint in the interior space was "splotchy" and that her father had painted the living room of the rental premises so that it would "look good".
60. ■ further testified that she has not smoked inside since she was informed smoking was not to occur inside. She also reiterated that marijuana consumption is limited to the garage space.
61. ■ acknowledged that her father had made alterations to the garage space and stated that this was done to accommodate her cousin and family who had visited and resided on the rental premises for "just a month" and that it was a "one time thing".
62. Regarding the repairs allegedly not completed, tenant 1 testified that to her knowledge, ■ had been in the basement apartment for 3 to 4 days cleaning. ■ had no comment on the bathroom vanity that was meant to be purchased.

#### **Analysis**

63. Under Section 10.(1)2. of the *Residential Tenancies Act, 2018* the tenant is responsible to keep the premises clean and to repair any damage caused by a willful or negligent act.

2. *Obligation of the Tenant* - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

Accordingly, in any damage claim, the applicant is required to show:

- That the damage exists;
- That the respondent is responsible for the damage, through a willful or negligent act;
- The value to repair or replace the damaged item(s)

In accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential tenancies policy 9-6.

Under Section 47 of the Act, the director has the authority to require the tenant to compensate the landlord for loss suffered or expense incurred as a result of a contravention or breach of the Act or the rental agreement.

***Order of director***

**47. (1) After hearing an application the director may make an order**

- (a) determining the rights and obligations of a landlord and tenant;*
- (b) directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;*
- (c) requiring a landlord or tenant who has contravened an obligation of a rental agreement to comply with or perform the obligation;*
- (d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the rental agreement*

64. The landlord provided no pictures and no record of condition assessment reports related to ■■■'s occupancy in the upstairs apartment. As such, insufficient evidence was provided to award costs as requested for the allegedly damaged floor and interior painting. Because there are multiple tenancies in the upstairs apartment it would be difficult to attribute blame to a particular party for any alleged or reported damage.
65. Regarding the costs claimed for repairs allegedly not completed, there was conflicting testimony provided. Where there is allowance in section 11 of the Act for arrangements to be made for work to be potentially completed by tenants in lieu of rent, the landlord spoke of his arrangements with ■■■ as unrelated to rent paid. As such, there is no legal basis for the Residential Tenancies Board to consider this particular claim for \$700.00

**Decision**

66. The landlords claim for compensation for damages does not succeed.

**Summary of Decision**

67. With respect to ■■■'s tenancy, the landlord is entitled to the following:

- A payment of rent in the amount of \$2239.80,
- An order for vacant possession of the rented premises,

- A payment of a daily rate of rent in the amount of \$24.66, beginning 31 March 2022 and continuing to the date the landlord obtains possession of the rental unit,
- [REDACTED] shall also pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

68. With respect to [REDACTED]'s tenancy, the landlord is entitled to the following:

- An order for vacant possession of the rented premises,
- [REDACTED] shall also pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

05 April 2022

\_\_\_\_\_  
Date

[REDACTED]  
\_\_\_\_\_  
John R. Cook  
Residential Tenancies Tribunal