

## Residential Tenancies Tribunal

Application: 2022 No. 556NL

Decision 22-0556-00

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:16 AM on 09 August 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the tenant”, was not in attendance.

### Issues before the Tribunal

3. The landlord is seeking an order for vacant possession of the rented premises.

### Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case is section 20 of the *Residential Tenancies Act, 2018* and rule 29 of the *Rules of the Supreme Court, 1986*.

### Preliminary Matters

6. The tenant was not present or represented at the hearing and there was no number available where he could be reached 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 he has been properly served. With his

application, the landlord submitted an affidavit stating that he had personally served the tenant with the application on 14 July 2022, and he has had 25 days to provide a response. 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.

## **Issue 1: Vacant Possession of Rented Premises**

### **Relevant Submissions**

7. The landlord stated that he had entered into a monthly rental agreement with the tenant on 01 November 2020, and a copy of that agreement was submitted with his application. The agreed rent is set at \$800.00 per month, and it is paid directly to the landlord, on the tenant's behalf, by social services.
8. The landlord pointed out that according to the submitted rental agreement, the rental unit is "suitable for one person only and is non smoking". He testified that the tenant is not complying with either of those rules.
9. The landlord stated that he had visited the unit on 28 April 2022 and there was a strong smell of cigarettes in the unit and he saw ashtrays inside the apartment. He further claimed that the walls are now discoloured from the smoking and there is a brown liquid running down the walls from smoke. He stated that he again saw ashtrays at the unit in May 2022 and there was still a smell of smoke there when he visited in June 2022. He also stated that he saw smoke coming out of the tenant's window just the day before this hearing.
10. The landlord also complained that the tenant's girlfriend, along with several other people, are residing at the property, even though it is a very small unit and suitable for just one person. Additionally, the landlord stated that there are a lot of people constantly coming and going from the tenant's apartment, and the landlord has been receiving reports from his neighbours that there is illicit drug activity taking place at the unit.
11. Because the tenant had not complied with the terms of his rental agreement, on 28 April 2022 the landlord issued the tenant a termination notice, and a copy of that notice was submitted with his application. That notice was issued under section 20 of the *Residential Tenancies Act, 2018* (notice where material term of agreement contravened) and it had an effective termination date of 31 May 2022.
12. The landlord stated that the tenant has not moved out, as required, and he is seeking an order for vacant possession of the rented premises.

### **Analysis**

13. Section 20 of the *Residential Tenancies Act, 2018* states:

***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.*

14. The rental agreement submitted by the landlord clearly states that the rental unit is a non-smoking unit and it also states that only 1 person is to reside at the property. Based on the testimony given by the landlord at the hearing, which I found to be credible, I find that the tenant has not been abiding by these terms and that he has been smoking inside the apartment and that he has allowed other people to reside with him.
15. However, section 20.(2) of the *Act*, quoted above, states that before a landlord can terminate a rental agreement for a breach of the terms of the agreement, he must first give the tenant a written notice that the tenant is in breach of their

agreement and then allow him time to come into compliance with those terms. But the landlord stated at the hearing that he had not issued the tenant any such written notice before he had issued him the termination notice.

16. As the landlord had not first issued the tenant such a written notice, he was not in a position, on 28 April 2022, to serve the tenant with a termination notice under this section of the *Act*. As such, that termination notice is invalid.

### **Decision**

17. The termination notice issued to the tenant on 28 April 2022 is not a valid notice.
18. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

10 August 2022

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Date



John R. Cook  
Residential Tenancies Tribunal