

## Residential Tenancies Tribunal

Application 2023 No. 185NL  
Application 2023 No. 188NL

Decision 23-0185-00

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 1:54 PM on 03 March 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord," participated in the hearing. [REDACTED] ("[REDACTED]") was also in attendance.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant," was also participated.

### Issues before the Tribunal

4. Both the landlord and the tenant are seeking a determination of the validity of the termination notice issued to the tenant on 25 February 2023.
5. The landlord is also seeking an order for vacant possession of the rented premises.

### 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 section 21 of the *Residential Tenancies Act, 2018*.

## **Issue 1: Determination of Validity of Termination Notice**

## **Issue 2: Vacant Possession of the Rental Premises**

### **Relevant Submissions**

#### The Landlord's Position

8. With his application, the landlord submitted a rental agreement showing that he had entered into a 1-year, fixed-term lease with the tenant, commencing 01 June 2019. According to this lease, the agreed rent is set at \$1150.00 per month, and it is acknowledged in the lease that the tenant had paid a security deposit of \$600.00.
9. The landlord testified that as a result of an accumulation of snow on the roof of the rental property, that roof had suffered serious structural damage. In support of that claim the landlord had submitted photographs with his application showing that some rafters in the attic are separating. He also submitted a letter from a professional engineer in which he writes that "until the roof structure is repaired the house should not be occupied."
10. As a result, on 25 February 2023, the landlord served the tenant with a termination notice, and a copy of that notice was submitted with his application. That notice was issued under section 21 of the *Residential Tenancies Act, 2018* (notice where premises uninhabitable) and it had an effective termination date of 27 February 2023.
11. The tenant has not vacated as required and the landlord is seeking an order for vacant possession of the rented premises.

#### The Tenant's Position

12. The tenant acknowledged receiving the termination notice. He stated that although he had not been up on the roof to examine the damage, he conceded that there was probably structural damage making the property unsafe.
13. The tenant requested, however, that the landlord allow him until 10 March 2023 to move out of the property.

### **Analysis**

14. Section 21 of the *Residential Tenancies Act, 2018* states:

#### ***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.*

15. Both the landlord and the tenant agreed at the hearing that the property had been made unsafe by the accumulation of snow on the roof, which had caused structural damage to that roof and the rafters. It was also agreed that the notice was valid and that the tenant would have to move.
16. The landlord agreed to give the tenant until 10 March 2023 to vacate the premises.

### **Decision**

17. As there was no dispute about the validity of the termination notice, I find that the landlord is entitled to an order for vacant possession of the rented premises, with an effective termination date of 10 March 2023.
18. The tenant 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.

03 March 2023

Date

John R. Cook  
Residential Tenancies Tribunal