

Residential Tenancies Tribunal

Application 2023-0306-NL

Decision 23-0306-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:19 a.m. on 17-July-2023.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant” did not attend.
4. The landlord provided a witness, [REDACTED] she attended by teleconference and will hereinafter be referred to as “the witness.”

Preliminary Matters

5. The tenant was not present or represented at the hearing and I was unable to reach him by telephone at the start of the hearing [REDACTED] as his phone is no longer in service. 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. The landlord submitted an affidavit with her application stating that she had served the tenant with notice of the hearing by prepaid registered mail on 19-May-2023, the tracking number [REDACTED] confirms same. 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.

Issues before the Tribunal

6. The landlord is seeking
 - Vacant possession of rental 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 21: Notice where premises uninhabitable.

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

9. The landlord submitted the rental agreement held with the tenant (LL#02). They have a written monthly rental agreement. The tenant pays \$700.00 a month, excluding utilities. Rent is due the first day of each month and is for the period of the 1st to last day of each month.
10. The tenant submitted a disconnect notice (LL#03) sent to her from Newfoundland Power. It is advising her that the electricity services to the tenant's rental unit has been disconnected on 03-April-2023. The landlord gave the tenant a termination notice at that time. She acknowledges that the notice wouldn't meet the requirements of the *Act* so she then gave him a second notice.
11. The new notice (LL#03) is on a "landlord's notice to terminate early – cause" form. The reason cited for termination is premises uninhabitable. The notice also cites "failure to pay rent," the landlord acknowledges that the notice does not meet the time frame for failure to pay rent. She is declaring that the unit is uninhabitable because the electricity has been cut off. The notice signed by the landlord and dated for 19-June-2023 with a termination date of 20-June-2023. The landlord is unsure if the electricity is still disconnected, she explains that Newfoundland Power will not provide her an answer and the tenant will not allow her in the unit.
12. The landlord stated that she served the notice to the tenant on 19-June-2023, by posting it to the window. Her witness confirms that she was with the landlord when she posted the notice.
13. Additionally, the landlord explains that the tenant has broken out the windows in the rental. She provided pictures (LL#04) and you can view the damaged window behind the notice (LL#03).

Analysis

14. In accordance with Section 21 of the *Residential Tenancies Act, 2018*, the landlord may only give the tenant a termination notice for the residence being uninhabitable if the tenant has caused the issue, and that issue meets the standard of uninhabitable.

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.

15. As per Section 10.8 of the *Residential Tenancies Act, 2018*,
Statutory conditions

10. 8. Disconnection of Services - A landlord or tenant shall not, without the written consent of the other party to the rental agreement, disconnect or cause to be disconnected heat, water or electric power services being provided to the residential premises.

16. The tenant has made the premises uninhabitable by causing the electric services to be disconnected, however, we are unable to determine, with certainty, if this issue is still a concern, because the landlord is unable to gain entry to the premises and Newfoundland Power has not provided her an update.
17. The issue of what counts as “uninhabitable” (i.e., cannot be used as a dwelling, for habitation, as a place to live, etc.) can be determined in a Residential Tenancies context by examining whether or not a rental unit is in compliance, for much of the province, with The Occupancy and Maintenance Regulations, which states:

4.(1) A person shall not occupy for human habitation or otherwise, or be the owner of, permit to be occupied for human habitation or otherwise, a dwelling or structure which does not conform to the standards set out in these regulations.

In [REDACTED] the Residential Property Standard By-Law states:

4.1 No person shall use, permit the use of, rent, or offer to rent any dwelling, dwelling unit, or room in violation of any provision of this By-Law or any other by-law or regulation of the City.

17.1 All windows, doors and hatchways in a dwelling or accessory building shall be maintained in good repair, weather tight and so as to prevent the entry of insects and animals.

18. It is not clear if the electricity is still disconnected, however, the landlord and her witnesses testimony has shown that the windows in the residence have been broken and therefore not in compliance with the City of [REDACTED] bylaws. This residence is therefore uninhabitable due to the broken windows.
19. The landlord’s notice, has been served in accordance with the Act, and is a valid notice. The tenant should have vacated the premises by 17-June-2023.

Decision

20. The landlord’s claim for an order for vacant possession succeeds.
21. The tenant shall vacate the premises immediately.
22. The tenant shall pay to the landlords 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.

Summary of Decision

23. The tenant shall:

- Vacate the property immediately
- Pay to the landlords 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.

The landlord:

- Will be issued an Order for Possession

July 21, 2023

Date



Jacqueline Williams, Adjudicator
Residential Tenancies Office