



## Residential Tenancies Tribunal

Application 2023-0425-NL

Amended Decision 23-0425-00

Jacqueline Williams  
Adjudicator

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### Introduction

1. Hearing was called at 11:03 a.m. on 30-May-2023.
2. The applicant, [REDACTED] hereinafter referred to as "the tenant" attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.

### Preliminary Matters

4. The tenant submitted an affidavit stating that he served the landlord electronically with notification of today's hearing on 02-May-2023; the landlord confirmed receipt of notification.

### Issues before the Tribunal

5. The tenant is seeking: validity of termination notice.

### 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 decision is the following section of the *Residential Tenancies Act, 2018*: Section 21: Notice where premises uninhabitable, as well as Policy 7 and 12.

### Issue 1: Validity of termination notice

### Tenant's Position

8. The tenant submitted his rental agreement (TT#02). He stated that he has a monthly agreement beginning 02-December-2022. He rents a room in the basement apartment with shared space. His rent is \$600.00 a month which includes utilities. He said he paid \$300.00 security deposit on 01-December-2022. He believes that the landlord is still in possession of the deposit.
9. The tenant submitted the termination notice (TT#03) given to him by the landlord. The notice is a Section 21 notice for premises uninhabitable. It is signed and dated for 01-May-2023 with a termination date of 04-May-2023. He confirms he received the notice by email on 01-May-2023.
10. The tenant disputes the validity of this notice, he said that the issue with the apartment is the responsibility of the landlord and not his fault. He explains that on 30-April-2023 the hot water boiler broke and the water overflowed into the apartment. He contacted the landlord and they came to the apartment. Then on 01-May-2023 he received an termination notice.

### Landlord's Position

11. The landlord confirms the details of the rental agreement as stated by the tenant. She confirms that they are still in receipt of the security deposit.
12. The landlord also agrees that the issue with the apartment is due to the break of the hot water boiler. She said that 40 gallons of water poured into the apartment. She attended immediately and contacted insurance.
13. She is being told, by the insurance company, that to get all the water out they will have to remove the flooring and completely renovate the bathroom and the entry will require work. She said that even though she has provided two dehumidifiers mold is already evident on the walls.
14. She explains that she gave the termination notice as a short term solution to this issue. She said that she needs the tenant out of the apartment so that the work can be done and that they even offered to refund his rent money for May, had he moved before the 19<sup>th</sup>.

### **Analysis**

15. 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. As the tenant explained the fault does not lie with him.

#### ***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.***

<sup>3</sup>  
*(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.*

16. In accordance with Residential Tenancies Policy 07-006, this issue is not the fault of either party. This is an emergency situation and it is the obligation of the landlord to rectify the issue. If the renovations cannot be completed while the tenant is living in the unit then, it is the responsibility of the landlord, to make alternative living arrangements for the tenant until the repairs are complete. As follows:

**Policy Number: 07-006**  
**Subject: Premises Uninhabitable**  
**Chapter: Notice of Termination**

*In a case where an emergency situation arises and the party whose obligation it is to remedy the problem is taking steps to do so, a landlord or tenant may not be justified to give a notice of termination. (ie. where flooding occurs as a result of excessive rain and the landlord takes immediate steps to alleviate the problem and provides alternate living arrangements on a temporary basis during clean up).*

17. As the tenant did not cause the issue of the flooding, they are not responsible for the subsequent issues and therefore the landlord is not justified in giving them a termination notice. I therefore find that the termination notice is not valid.

#### **Decision**

18. The termination notice dated 04-May-2023 is not valid.

#### **Issue 4: Hearing expenses reimbursed \$140.00**

19. The tenant submitted the receipt for \$20.00 for the cost of the hearing (TT#04) and a receipt for \$120.00 for the cost of a lawyer to stamp his affidavit (TT#05). As his claim is successful, pursuant to policy 12.01, he is entitled to reimbursement of those costs from the landlord.

#### **Summary of Decision**

20. The termination notice is not valid.

The landlord shall reimburse the tenant \$140.00 for his hearing expenses.

June 13, 2023

Date

Residential Tenancies Office