

Residential Tenancies Tribunal

Application 2023-0651-NL

Decision 23-0651-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:10 a.m. on 12-September-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.
4. The applicant submitted an authorized representative form (TT#01), naming [REDACTED] [REDACTED], hereinafter referred to as “the authorized representative, she attended by teleconference.

Preliminary Matters

5. Both parties confirmed receipt of notification for today’s hearing electronically from our office on 17-August-2023.
6. Both parties confirm that the tenant has moved and the landlord has regained possession of her property. The landlord’s application 2023-0698-NL for Vacant possession of the rental premises has therefore been discontinued.
7. The tenant’s application has been amended to increase rent owed from \$1,800.00 to \$3,600.00 and utilities from \$505.74 to \$945.28; to reflect the current amount owed.

Issues before the Tribunal

8. The tenant is seeking
 - Validity of termination notice
 - Refund of Rent \$3,600.00
 - Utilities \$945.28

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
10. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory Conditions, Section 16: Rental increase, Section 18: Notice of termination of rental agreement, Section 20: Notice where material term of agreement contravened, Section 21: Notice where premises uninhabitable, Section 22: Notice where tenant's obligation not met, Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy, and Section 34: Requirements for notices,

Issue 1: Validity of termination notice

Tenant's Position

11. The tenant submitted his copy of the rental agreement (TT#03). The authorized representative stated that the terms of the agreement are, \$1,200.00 is due each month on the first day for rent. The tenant's utilities are not included in the rent. He took occupancy on 01-May-2022 and moved out on 26-August-2023. The tenant paid \$900.00 security deposit on 28-April-2022 and the landlord is still in possession of this deposit.
12. The authorized representative said that the tenant did not give the landlord written notice that they were vacating the premises. She explained that the landlord lives in the same area and was aware that they were moving out during the month of August 2023. She said that the tenant had received a number of termination notices and that he moved because he was given notice by the landlord.

First notice

13. The tenant is questioning the validity of the notices (TT#04) served by the landlord. The first notice is on a "Termination Notice to Tenant" form. The landlord has signed and dated the notice on 01-May-2023 with a termination date of 01-August-2023. The authorized representative said that the landlord taped this to the tenant's door on 01-May-2023.
14. The authorized representative said that the notice has written at the bottom the reason for the notice is the lease was broken due to cannabis usage. They dispute that this constitutes a breaking of the lease because the rental agreement (TT#03) does not list "no smoking cannabis as defined under the Smoke-Free Environment Act" in part 11. She said that the tenant and the landlord had in the past, smoked cannabis together in the unit and this is not a violation of his written agreement.

Second notice

15. The authorized representative also disputes the second notice served. This notice is signed and dated for 06-July-2023 with a termination date of 12-July-2023. She said that this notice wasn't posted to the door until 07-July-2023. This notice is on a "Landlord's Notice to Terminate Early – Cause" form for: Premises uninhabitable, Failure to keep the premises clean and to repair damage, as well as Interference with Peaceful Enjoyment and reasonable privacy.
16. The authorized representative disputes that the house is uninhabitable, she said that they had people in from housing to assess the issues with the black mold and that they told her that the house was okay.
17. The authorized representative disputes that the belongings in the basement were hers, she said that the tenant owns the items that were stored in the basement. She explained that the tenant has a disability and could not move everything out of the basement, when told to do so by the landlord, so she helped him make arrangements for this to occur. She confirmed that they did move everything out and that the basement was no longer accessible to the tenant once the leak occurred.
18. The authorized representative said that the landlord and the tenant were friends. She said that there were ongoing issues with the landlord and her husband and at one point the landlord was saying that she was going to move into the basement of the house to help the tenant out. The authorized representative vehemently denies any blame directed towards the tenant for the damages to the landlord's car and she said that this happened on a parking lot and has nothing to do with the tenant.
19. The authorized representative explained that the comment made to the RCMP about the landlord's mother teaching the landlord nothing, was made because the landlord's mother had advised her, the authorized representative, that when you have an issue you should remain calm and handle things legally. She said that the landlord is not being appropriate or reasonable in the way she is handling things.

Third notice

20. The tenant said that the third notice (LL#03) it is on a "Landlord's Notice to Terminate Early – Cause" form for: Interference with peaceful enjoyment and reasonable privacy. The notice is signed for 13-July-2023 with a termination date of 18-July. She agrees that the landlord posted the notice to the tenant's door on 13-July-2023.

Landlord's Position

21. The landlord confirms the details of the rental agreement as stated by the authorized representative. She confirms she is still in possession of the security deposit.
22. She said that a neighbor made her aware that the tenant was moving and she regained possession of the property around 26-August-2023. She confirmed that the tenant didn't give her written notice that they were moving. She also agrees that she served the tenant with three termination notices.

First notice

23. The landlord confirms that the notice provided by the tenant was the first notice she served. She agrees that she posted the notice to the tenant's door on 01-May-2023.

Second notice

24. The landlord provided a picture showing that she posted the notice on the tenant's door (LL#02). She believed that she posted the notice on the date signed: 06-July-2023. The landlord explained her reasoning for each of the issues of cause.

25. The landlord explained that there had been a water main break in the house, the area was flooded and that this caused black mold. She said that this made the house uninhabitable and that the insurance company told her it would be best if the tenants moved out.

26. The landlord said that this is also tied to the "failure to keep the premises clean and repair damage." She explained that after the house was seen by insurance, the contents downstairs, which she believes belongs to the authorized representative, had to be cleared out so that the cleanup and repairs could begin. She stated that she did not give written notice that this work had to be done, she just told them verbally. She confirms that subsequently this work was done by the tenant.

27. The landlord believes that the tenant was causing issues with her husband and posting about her on social media (LL#04). She said that this was interfering with her peaceful enjoyment. She said that in the evenings he would call her and this would cause issues. She also had 3 of her tires slashed and the side of her car scrapped. She said that the authorized representative said to the RCMP that "her (the landlord's) mother taught her nothing and that she needs to get to get a major slap on the wrist for it."

Third notice

28. The landlord submitted the third notice (LL#03) it is on a "Landlord's Notice to Terminate Early – Cause" form for: Interference with peaceful enjoyment and reasonable privacy. The notice is signed for 13-July-2023 with a termination date of 18-July. She said that she posted the notice to the tenant's door on 13-July-2023.

Analysis

29. The landlord's termination notices do not meet the standard or requirements of the *Act*, each is invalid for its own reasons, as follows:

First notice

30. The first notice is on a "Termination Notice to Tenant" form. The landlord has signed and dated the notice on 01-May-2023 with a termination date of 01-August-2023. This notice does not meet the requirements of the *Act* for a few reasons, firstly the notice does not indicate the Section of the *Act* that applies, and additionally there is no address

included on the notice. In accordance with Section 34 of the *Residential Tenancies Act, 2018* as follows:

Requirements for notices

34. A notice under this Act shall

- (a) be in writing in the form prescribed by the minister;**
- (b) contain the name and address of the recipient;**
- (c) identify the residential premises for which the notice is given; and**
- (d) state the section of this Act under which the notice is given.**

31. If we assume that the notice is a Section 18, because the notice provides 3 months, the landlord has dated the notice for the first day of August. A Section 18 notice should have a termination date of the last day of a rental period, not the first day of a rental period, so this would deem this notice invalid, as follows:

Notice of termination of rental agreement

18. (2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises

- (a) not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;**
- (b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and**
- (c) not less than 3 months before the end of the term where the residential premises is rented for a fixed term.**

32. Alternatively if the notice was intended for breach of material term under Section 20 of the *Residential Tenancies Act, 2018*, as implied by the note written at the bottom of the notice, that the tenant had smoked cannabis and had therefore broken the lease, the notice would still require notice for the end of the rental period. Additionally, the landlord would have to have given notice of the contravention (i.e. smoking of cannabis), as well as, an opportunity for the tenant to comply with the agreement. I agree with the authorized representative who stated that this is not a contravention of the contract as smoking of cannabis is permitted in part 11 of the rental agreement.

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.

33. I therefore find that the first notice signed and dated on 01-May-2023 with a termination date of 01-August-2023 is not valid.

Second notice

34. The second notice is signed and dated for 06-July-2023 with a termination date of 12-July-2023. This notice is on a “Landlord’s Notice to Terminate Early – Cause” form. The authorized representative said that this notice wasn’t posted to the door until 07-July-2023. Review of the landlord’s photographic evidence (LL#02) showing that the notice was posted to the door, does confirm in the properties that this photo was taken on 07-July-2023 and therefore the notice was not posted until 07-July-2023. This notice is for cause as follows: Premises uninhabitable, Failure to keep the premises clean and to repair damage, as well as Interference with Peaceful Enjoyment and reasonable privacy. Premises uninhabitable does not require notice, however failure to keep the premises clean and to repair damage, as well as interference with peaceful enjoyment and reasonable privacy both require 5 clear days’ notice; service on 07-July-2023 does not meet this requirement.

35. Additionally the landlord did not meet the burden of proof to show that the tenant was in violation of the causes cited.

36. 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.

37. Based on the testimony of both parties, the issue is the mold from the water main leak in the basement. This leak was not caused by the tenant and the landlord therefore cannot terminate his tenancy for this reason, as he is not to blame for this issue. She should instead seek alternative arrangements to provide housing for the tenant while the house undergoes the necessary repairs.
38. In accordance with Section 22 of the *Residential Tenancies Act, 2018*, the tenant must be in violation of a statutory condition for the landlord to give him notice under Section 22. The tenant did not cause the issue with the leak and therefore was not in violation of this section, as follows:

Notice where tenant's obligation not met

22. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 2 set out in subsection 10(1), the landlord may give the tenant notice requiring the tenant to comply with the condition.

(2) Where a tenant contravenes statutory condition 2 set out in subsection 10(1) within 3 days after the notice under subsection (1) has been served or within a reasonable time, 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.

- (3) 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.

39. Additionally, the landlord must give written notice that she requires his belongings moved and give him a reasonable amount of time to do so. Additionally both parties acknowledge that the tenant's belongings were moved to accommodate the repair.
40. Finally for a termination notice for interference with peaceful enjoyment and reasonable privacy, 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.*

(b) *The landlord shall not unreasonably interfere with the tenant's reasonable privacy and peaceful enjoyment of the residential premises, a common area or the property of which they form a part.*

41. According to Residential Tenancies Policy 7-05 Peaceful Enjoyment, interference of peaceful enjoyment is defined as: "an ongoing disturbance or activity, outside of normal everyday living, caused by the landlord or the tenant". Peaceful enjoyment may include, but is not limited to the following: (i) excessive noise; (ii) aggressive or obnoxious behaviour; or (iii) threats and harassment.
42. When issuing a termination notice for cause, it is incumbent on the landlord to prove that there is cause. Based on the testimony of both parties, I agree that there are ongoing issues at the rental, however it is not clear that the tenant is the issue. The landlord's evidence of the tenant harassing her on social media does show him airing grievances, but does not name her. The testimony of both parties indicate that once the basement flooded the landlord was determined to regain access to the property and did not seek to mitigate the situation by working with the tenant. It appears, instead, that she was singularly motivated to terminate the agreement with the tenant and did not consider his rights under the rental agreement or the *Residential Tenancies Act, 2018*. The burden of proof that the tenant is in violation of the *Act* is that of the landlord and she did not meet this burden.
43. As the landlord did not prove her case for cause and as the notice was posted on 07-July-2023 and does not provide the required 5 days' notice, I find that this notice is not valid.

Third notice

44. The third notice is also on a "Landlord's Notice to Terminate Early – Cause" form for: Interference with peaceful enjoyment and reasonable privacy. The notice is signed for 13-July-2023 with a termination date of 18-July. Both parties confirm that she posted the notice to the tenant's door on 13-July-2023.
45. This notice is not valid for two reasons, first as determined in paragraph 42, the landlord has not proven that the tenant was interfering with her peaceful enjoyment. Additionally, the landlord has listed the date as July 18^h, and has not included the year. As per Section 24 of the Residential Tenancies Act, 2018 the date is required, as follows:

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.

46. In William & Rhodes Canadian Law of Landlord and Tenant, when discussing termination notices, the authors point out that termination notices must be unambiguous and one of the principles that must be borne in mind is that “an inaccuracy in certain matters such as the date of termination cannot be ignored even if the wrong date is inserted by a slip”. Although it is likely that the landlord’s omission of the year in the date was an unintentional slip, that slip has made the notice ambiguous and it is therefore invalid.
47. I find that due to lack of proof for cause, omissions on notices or late service, each of the notices served to the tenant by the landlord are not valid.

Decision

48. The termination notices served to the tenant are not valid.

Issue 2: Rent \$3,600.00

Tenant’s Position

49. The authorized representative stated that the tenant is seeking rent refunded for loss of rental space after the water main leak in the basement.
50. The time frame of the leak is as approximated as follows:
 - 26-April-2023 Authorized representative informed landlord that there is a leak
 - Before 01-May-2023 insurance had come in and assessed the issue
 - By the end of May early June is the first tear out
 - By the End of June there is the second tear out
 - At the end of the tenancy they were still waiting on the third tear out
51. The authorized representative said that the tenant was renting a 5 bedroom house. The upstairs has 3 bedrooms, a kitchen, living room and bathroom. Downstairs has 2 bedrooms, a kitchen, living room, laundry room and bathroom. Both floors are the full area of the house. Once the leak occurred, the landlord had work ongoing downstairs and that area was no longer accessible to the tenant. The landlord made no accommodation for the loss of rental area and had indicated that she would be raising the rent; however the rent was never raised.
52. The authorized representative stated that the tenant is seeking 50% of the \$1,200.00 rent paid to the landlord by the Department of Children, Seniors and Social Development on behalf of the tenant for the months of May, June, July and August. She said he is also seeking the rent paid on his behalf for September as he moved out in August.

Landlord's Position

53. The landlord agrees with the timeline stated in paragraph 50; she said that the insurance company thought that the leak was at least a week old when it was reported.
54. The landlord said because of the damages, she was trying to evict the tenant but he would not leave. She said that he was using the downstairs for storage and that income support was paying for a 5 bedroom unit that she believed the tenant did not require. She said that she contacted income support and told them he only needs a 3 bedroom and that he would no longer have access to the downstairs.
55. The landlord said that she didn't charge the tenant for the rent in September, however it was automatically deposited in her account.

Analysis

56. Section 16 of the *Residential Tenancies Act, 2018*, states:

Rental increase

16 (5) Where a landlord discontinues a service, privilege, accommodation or benefit or a service, privilege, accommodation or benefit is unavailable for a period of time, and the discontinuance or unavailability results in a reduction of the tenant's use and enjoyment of the residential premises, the value of the discontinued service, privilege, accommodation or benefit is considered to be an increase in the amount of rent payable.

(6) The director may, upon hearing an application under section 42, value a service, privilege, accommodation or benefit discontinued or unavailable for a time under subsection (5).

57. I accept the testimony of both parties that the basement was inaccessible due to the repairs required for a water main break. The tenant was paying to the landlord \$1,200.00 a month for the use of both floors of the house, the loss of the downstairs is a full 50% of the rental area. The loss of this accommodation is considered a rental increase as the tenant is paying the same amount of rent for 50% of the area agreed upon.
58. As rent is paid for the use and enjoyment of a rental property, and as the tenant was no longer permitted the use of the basement, I value the loss of that space at 50% of the rent paid for May, June, July and August. Additionally, as the tenant moved out in August and the landlord was paid for September in error, the landlord shall also return the overpayment of rent for that month.
59. I find that the landlord shall reimburse the tenant rent in the amount of \$3,600.00 as follows:

• May	\$600.00
• June	600.00
• July	600.00
• August	600.00
• September	<u>1,200.00</u>
• Total	<u><u>\$3,600.00</u></u>

Decision

60. The tenant's claim for rent reimbursed succeeds in the amount of \$3,600.00

Issue 3: Utilities \$945.28

Tenant's Position

61. The tenant submitted the utility bills (TT#05) for the house from May – August. The authorized representative said that the tenant paid the bills for the entire property, however he was denied access to the downstairs. He is seeking 50% of this cost. Included in his evidence is the NL Power billing (TT#05) as follows:

Billing Period	amount
April 18 – May 17 daily rate April 28 – May 17	283.13
May 17 – June 16	268.12
Jul 19 – August 17	439.54
total	990.79

62. Note the billing for April 18 – May 17 is calculated for a daily rate as both parties agree that the issue with the leak was reported on or about April 26th. Therefore \$381.55 divided by 31 days = \$12.31 a day x 23 days = \$283.13. There was no billing provided for June to July.

63. The tenant is seeking half the cost of his utilities.

Analysis

64. As it has been determined in paragraph 58 that the tenant's unit was reduced by half, it logically follows that if the tenant is not permitted the use and enjoyment of that space, he should also not be required to pay for the utilities for the same. I agree with the tenant's claim and find that the landlord shall reimburse the tenant 50% of the utilities, as follows: 50% x \$990.79 = \$495.40.

Decision

65. The tenant's claim for utilities succeeds in the amount of \$495.40.

Issue 4: Hearing expenses reimbursed \$20.00

66. Both parties are claiming for hearing expenses, The tenant submitted the receipt for \$20.00 for the cost of the hearing (TT#06) as well as a list of expenses for: Dicks co photocopies \$14.88, Walmart USB purchase \$22.97, Envelopes Canada post \$3.44, Bubble envelope \$21.03 as well as Registered mail \$11.21, however no receipts were proved for the administrative costs.

67. The only receipt for expenses provided by the tenant is for the application fee of \$20.00, therefore this is the only expense that will be considered. Pursuant to policy 12.01, as the tenant is successful in his claim, he is entitled to reimbursement of the \$20.00 application fee cost from the landlord.

68. The landlord submitted the receipts for \$20.00 for the cost of the hearing (LL#05) as well as two receipts from Dicks and Company for \$12.51 and \$16.56 and pursuant to policy 12.01, as the tenant's claim was successful the landlord is not entitled to reimbursement of those costs from the tenant.

Summary of Decision

69. The notices served to the tenant are invalid.

70. The landlord shall pay to the tenant \$4,115.40 for rent, utilities and hearing expenses, as follows:

- Rent..... \$3,600.00
- Utilities 495.40
- Hearing expenses 20.00
- Total **\$4,115.40**

September 22, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office