

## Residential Tenancies Tribunal

Application 2024-0225-NL

Seren Cahill  
Adjudicator

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### Introduction

1. Hearing was held on 17-April-2024 at 2:01 pm.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as the landlords, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, did not attend.

### Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach them by telephone at the start of the hearing. 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 they have been properly served. The landlords submitted an affidavit (LL#1) with their application stating that they had served the tenant with notice of the hearing via electronically on 4-April-2024. The appropriate supporting documents were also provided (LL#2). 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 their absence.

### Issues before the Tribunal

5. Should the landlord's application for an order of vacant possession succeed?

### 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* (the *Act*).
7. Also considered and referred to in this decision are sections 24 and 34 of the *Act*, 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.

### **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.

### **Issue 1: Vacant Possession of the Rental Premises**

8. In order to receive an order for vacant possession, a landlord must have issued a valid notice of termination. To be valid, a termination notice must comply with all relevant sections of the *Act*. The landlord provided a copy of a termination notice (LL#3) which they testified they had served on the tenant. LL#3 is in writing in the form prescribed by the minister. It contains the name and address of the recipient. It identifies the residential premises for which the notice is given and states the section of the *Act* under which it was given. It therefore complies with s. 34 of the *Act*, reproduced above.
9. LL#3 was signed by the landlord. It states the date on which the rental agreement terminates, 31-March-2024. It was served to the tenant electronically on 5-March-2024. It therefore complies with s. 24(2) of the *Act*, reproduced above.
10. LL#3 shows a termination date of 31-March-2024. This provides more than five clear days notice. The timeline therefore complies with s. 24(1) of the *Act*.
11. The only remaining issue is whether or not the tenant violated statutory condition 7(a) as set out in subsection 10(1) of the *Act*, which reads as follows:

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.

12. The landlords testified that the tenant plays music loudly late at night, disturbing their sleep. They testified that they have asked the tenant to stop and that the tenant will apologize and adjust the volume, but that this has done nothing to discourage the tenant who continues to disturb them at night with loud music. They also testified that the tenant smokes inside the downstairs apartment, which has filled the upstairs with the smell of smoke and raised health concerns. I accept the landlord's uncontradicted evidence.
13. Considering the evidence in its totality, I accept that the tenant has interfered with the landlord's right to peacefully enjoy their property, and that they did so unreasonably. The termination notice is therefore valid.
14. As the termination notice was valid, the tenancy ended on 31-March-2024. Insofar as the tenant is still residing at the premises, they are doing so illegally.

**Decision**

15. The landlord's application for an order of vacant possession succeeds.

**Summary of Decision**

16. The tenant shall vacate the premises immediately.
17. The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sherriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession.
18. The landlord is granted an order of possession.

16-May-2024

Date

  
Seren Cahill  
Residential Tenancies Office