

Residential Tenancies Tribunal

Application 2024-0713-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was held on 29 August 2024 at 1:46 PM via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, attended the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, attended the hearing. [REDACTED] did not attend.

Preliminary Matters

4. The landlord submitted an affidavit (LL # 1) indicating the tenants were served an Application for Dispute Resolution at approximately 1:37 PM, Eastern Standard Time, on 2 August 2024 by registered mail ([REDACTED] & [REDACTED]) and by electronic mail [REDACTED] & [REDACTED]. The tenant did not dispute this service.
5. There is a written fixed term rental agreement which commenced on 1 December 2023 (LL # 2) with rent set at \$1,800.00 due on the first of each month. There was a security deposit of \$900.00 collected on the tenancy on 1 December 2023 which the landlord remains in possession of. The landlord amended her application at the hearing as she was not seeking compensation of utilities paid and the tenants remain in the rental premises the date of the hearing (29 August 2024).
6. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome she is requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant must establish that her account of events is more likely than not to have happened

Issues before the Tribunal

7. The landlord is seeking an Order of Vacant Possession of the rented premises.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in Sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. Also, relevant and considered in this claim are Sections 10, 21, 34 and 35 of the *Act*, along with *Policy 07-006 of the Residential Tenancies Program: Premises Uninhabitable, Notice of Termination*.

Issue 1: Vacant Possession of the Rental Premises

Landlord Position

10. The landlord submitted the rental agreement with the tenants (LL # 2). The tenants pay \$1,800.00 per month, excluding utilities.
11. The landlord testified she had contact with Newfoundland Power on 26 July 2024 at 8:12 AM Eastern Standard time when she was informed the power had been disconnected at the rental premises on 23 July 2024. Along with her application, the landlord provided evidence of the communication with NL Power on 26 July 2024 (LL # 3) as well as a letter from the utilities company confirming this disconnection of power (LL # 4) on 23 July 2024.
12. The landlord testified following this information, she issued the tenants a Landlord's Notice to Terminate Early- Cause under Section 21 on 26 July 2024 with a request for the tenants to vacate 26 July 2024 (LL # 5). This termination notice was issued electronically to both tenants ([REDACTED] & [REDACTED]) on 26 July 2024 at 8:56 AM Eastern Standard time (LL # 6).
13. The landlord testified on 30 July 2024 at 5:28 PM Eastern Standard time, she was contacted by Newfoundland Power who stated the power was reconnected to the rental premises on 29 July 2024 (LL # 7).

Tenant Position

14. The tenant did not dispute the power had been disconnected at the rental premise. She did not dispute they received the termination notice on 26 July 2024 from the landlord. The tenant testified the monies owing to Newfoundland Power was paid on 26 July 2024 after they received notification that monies were owed (T # 1). She stated due to 26 July 2024 falling on a Friday, it was not reflected on their power account until 29 July 2024. The tenant provided evidence that on 26 July 2024 at 2:17 PM, the power had been restored to the rental premise (T # 2).

Analysis

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

Notice where premises uninhabitable

21. (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. 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 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.

17. In review of the pieces of evidence offered by both parties, I observe two pieces of evidence identifying the power to the rental premises was cut on 23 July 2026 (LL # 4), the landlord was aware of this on 26 July 2024 (LL # 3) and on 26 July 2024 at 8:56 AM Eastern Standard time (10:26 AM Newfoundland Standard time), the landlord issued the tenants electronically a Notice to Terminate under Section 21 (LL # 5). This Notice to terminate followed by the timelines and means of service of the *Act*.
18. The tenant provided evidence (T # 2) to identify the power had been restored at the rental premises on 26 July 2024 at 2:17 PM Newfoundland Standard time (12:47 PM Ontario Standard time).
19. At the time the Termination Notice was issued to the tenants (10:26 AM Newfoundland Standard time), I find the landlord was in a position on 26 July 2024 to issue the tenants this notice under Section 21 of the *Act*.

Decision

20. The landlord's claim for an order for vacant possession of the rented premises succeeds.

Summary of Decision

21. The tenants shall vacate the premises immediately.
22. The tenants 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.
23. The landlord is granted an order of possession.

20 September 2024
Date



Michael Reddy, Adjudicator
Residential Tenancies Office