

## Residential Tenancies Tribunal

[REDACTED] Decision 20-0105-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 11:20 am on 09 March 2020 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. His co-applicant, [REDACTED] ("[REDACTED"]"), was not in attendance. She was represented by [REDACTED] ("[REDACTED"]") and a letter of authorization is on file.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", also participated in the hearing

### Issues before the Tribunal

4. The tenant's are seeking the determination of the validity of 3 termination notices issued to them by the landlord.
5. The landlord is seeking an order for vacant possession of the rented premises.

### 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 case are sections 10, 18, 20 and 24 of the *Residential Tenancies Act, 2018* and Jack Fleming's *Residential Tenancies in Ontario* (Butterworths Canada Ltd., Markham, 1998).

## Preliminary Matters

8. The landlord called the following witnesses:

- [REDACTED] ("[REDACTED]") – landlord's mother's homecare worker
- [REDACTED] ("[REDACTED]") – landlord's mother's homecare worker
- [REDACTED] ("[REDACTED]") – landlord's son

### Issue 1: Validity of Notice Issued on 31 January 2020

#### Relevant Submissions

9. The tenants moved into the rental unit on 01 June 2012. The current rent is set at \$725.00 and the tenants had paid a security deposit of \$385.00.
10. The rental unit is a basement apartment and the landlord lives in the unit directly above the tenants.
11. 3 notices of termination were issued to the tenants in a period of less than 3 weeks between 31 January and 18 February 2020. These notices were submitted with the tenants' application.
12. The first termination notice ([REDACTED] #1) was delivered to the tenants on 31 January 2020 and it had an effective termination date of 31 April 2020.

#### Analysis

13. This notice was issued under section 18 of the *Residential Tenancies Act, 2018* which states:

##### ***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***

...

***(b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month***

...

***(9) 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.
14. Section 18 of the *Act* allows a landlord to terminate a rental agreement, on 3 month's notice, without having to provide reasons to either the tenant or this Board.
15. This notice meets all the requirements set out in this section of the *Act*, except that it specifies a termination date of 31 April 2020—a nonexistent date.
16. However, I find that this “slip of the pen” does not invalidate the notice, and there have been previous cases in Canada where the courts have come to similar conclusions.
17. For instance, in *Residential Tenancies in Ontario*, it is written:

*In Wolch v. Mallia the notice of termination was for November 31<sup>st</sup>, a nonexistent date. The Divisional Court found that this “mere slip” did not offend the principle in the Re Bianchi and Aguanno case holding that the clear intention of the landlord was to terminate the tenancy on the last day of November.*

18. Nevertheless, I find that this notice does not determine the tenancy as the landlord had issued another termination notice to the tenant on 18 February 2020 (■ #3) which has an earlier termination date of 24 February 2020. As I explain below, I find that that notice is valid it therefore voids out the notice under consideration here.

## **Decision**

19. The termination notice issued to the tenants on 31 January 2020 is void and of no effect.

## **Issue 2: Validity of Notice Issued on 17 February 2020**

### **Relevant Submissions**

#### The Landlord's Position

20. The tenants had been living in the unit since June 2012 and in June 2019 they allowed their daughter, ■, to move into the unit.

21. The landlord claimed that by letting their daughter move into the unit the tenants were in breach of their rental agreement as it was initially intended that only 2 people would be residing in the apartment. She also stated that the tenants had not sought her permission to have their daughter move in.
22. In support of that claim, the landlord submitted into evidence a copy of the original advertisement she had placed in the local newspaper (█ #1).
23. On 31 January 2020 the landlord issued the tenants a notice (█ #4) stating that the tenants were in breach of their verbal rental agreement and that █ would have to vacate by 15 February 2020.
24. █ did not vacate the premises and therefore on 17 February 2020 the landlord issued the tenants a second termination notice (█ #2). That notice was issued under section 20 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 31 March 2020.

### The Tenants' Position

25. The tenant denied that there was a verbal agreement that that only 2 people could reside at the unit.
26. █ pointed out that the submitted advertisement does not state that the unit is only to be occupied by 2 people. Rather, it states that the unit contains 2 bedrooms.
27. █ pointed out that she had been at the unit since June 2019 and the landlord knew that she was residing there. She stated that she moved her possessions into the property in November 2019 and the landlord assisted her and was in the rental unit and had seen that her bedroom had been set up. She also testified that the landlord had sent text-messages to her mother stating that █ seemed to be doing well since she moved in and she sent messages to █ wishing her a merry Christmas.
28. █ stated that there was no indication prior to 31 January 2020 that █ was not allowed to live at the unit.

### **Analysis**

29. Section 20 of the *Residential Tenancies Act, 2018* states:

#### ***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.*

30. The burden of proof lies with a landlord to establish the terms of the rental agreement. As there is no written lease, the only evidence submitted to the Board to establish the terms of the agreement is the contradictory testimony of the landlord and the tenant.
31. The tenant stated that there was no agreement that only 2 people could reside at the unit and the landlord conceded at the hearing that there was no explicit agreement on that matter. I therefore find that as there was no agreement that only 2 people were permitted to reside at the unit, the tenants were not in breach of their agreement when they allowed [REDACTED] moved into the unit.
32. As the tenants had not breached their rental agreement, the landlord could not terminate the tenancy under this section of the Act.

## Decision

33. The termination notice issued to the tenants in 17 February 2020 is not a valid notice.

### Issue 3: Validity of Notice Issued on 18 February 2020

#### Relevant Submissions

##### The Landlord's Position

34. The landlord stated that her mother lives with her and she submitted a letter from the Cancer Care Program (■ #2) stating that she has ■ and "has a life expectancy of weeks".
35. Because of her medical condition, the landlord had an oxygen machine installed in her mother's room on 21 December 2019. The landlord's mother's room is directly above the entranceway to the tenants' apartment and her window is located there as well. The landlord's mother sometimes finds her room stuffy and she opens the window to get some fresh air.
36. The landlord pointed out that the tenants and ■ are all smokers and they smoke outside their entranceway and right below her mother's window. The landlord stated that the smell of smoke bothers her mother and on 21 December 2019 she requested that the tenants refrain from smoking in that entranceway "for the time being".
37. The landlord claimed that the tenants have continued to smoke in the entranceway and there is a constant smell of cigarette and marijuana smoke in her apartment. That claim was corroborated by all 3 of her witnesses. It was also corroborated in an affidavit (■ #5) from another of the tenant's mother's homecare workers.
38. The landlord stated that one of her mother's homecare workers, ■, noticed that the tenants were smoking in the entranceway on 14 January 2020 and she called out of the window several times requesting that they move away. ■ was called a witness and corroborated that claim. She stated that the tenants did comply with her request.
39. The landlord claimed that since she had requested that the tenants refrain from smoking in the entrance way there has been a lot of tension between them and some instances of what she described as "bullying".
40. For instance, she claimed that ■ had confronted ■ and had told her to "mind her own business" or she would get her fired from her job. ■ testified that ■ had confronted her and told her that she had been saying untrue things to the

landlord about her. ■■■ also testified that that ■■■ had called her place of employment and made a complaint about her.

41. The landlord also complained about an incident at her unit after she had issued a termination notice to the tenants. She stated that ■■■ had “come to the door like a savage” and she was waving the notice in ■■■’s face and had been using profanities. The landlord stated that this incident had upset her mother very much, and she now is afraid to leave her room in case ■■■ returns to the unit again.
42. ■■■ corroborated the landlord’s account of that incident and she claimed that ■■■ had been verbally abusive and that the landlord’s mother did become upset.
43. The landlord stated that because of that incident she called the police and they visited the landlord. She claimed that she was informed by the police officer that there was nothing that he was able to do about the matter and he left the unit without speaking to ■■■ or the tenants.
44. The landlord claimed that it is a very stressful time in her life given that her terminally ill mother is living with her. She argued that the tenants are compounding that stress by continuing to smoke in the entranceway which is upsetting her mother. She also claimed that there is now a lot of tension between her and the tenants.
45. Because of these issues, the landlord issued a 3<sup>rd</sup> termination notice to the tenants on 18 February 2020 (■■■ #3). That notice was issued under section 24 of the *Residential Tenancies Act, 2018* (notice where tenant contravenes peaceful enjoyment and reasonable privacy) and it had an effective termination date of 24 February 2020.
46. The landlord is seeking an order for vacant possession of the rented premises.

#### The Tenant’s Position

47. The tenant stated that there was only one occasion where ■■■ had requested that they stop smoking in the entranceway and he stated that they had immediately complied with that request.
48. He stated that each time he wishes to smoke a cigarette, he first checks to see if the landlord’s mother’s window is open. If it is closed, he will smoke in the entranceway, but if it is open, he walks to the end of the driveway so that the smell of smoke won’t enter her apartment through that window. He denied that he had been smoking at any time when the window was open.
49. ■■■ pointed out that the landlord’s mother’s homecare workers are also smokers and they also smoke outside of the house. She suggested that the smell of smoke that the landlord can detect in her apartment is coming from the homecare workers, not the tenants. ■■■ also pointed out that the neighbours who

live on either side of the landlord also smoke marijuana and they could also be contributing to the smell in the landlord's apartment.

50. █ acknowledged that she had gone to the landlord's unit after she had received a termination notice and she acknowledged that she was mad. She testified, however, that she was not using profanities on that date but was merely questioning how the landlord thought that the notice was valid.
51. █ and the tenant also acknowledged that █ had had a conversation with one of the landlord's mother's homecare workers but they claimed that they had no knowledge as to whether she had called her employer.

## **Analysis**

52. 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.***

and according to section 24 of this Act:

### ***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.
53. It was evident from the behaviour of the parties at the hearing that their once friendly relationship had significantly deteriorated and I accept the landlord's claim that there was a lot of tension between them.
54. Given the condition of the landlord's mother, I agree with her that her request that the tenants not smoke outside of her window was reasonable and I find that they have not complied with that request and that is interfering with the landlord's mother's peaceful enjoyment.
55. I also accept the testimony of the landlord and her witness that on at least one occasion [REDACTED] was confrontational and had been verbally abusive to the landlord. That sort of anti-social behaviour is unreasonable and I find that it has contributed to the tension the landlord had described at the hearing and that it had further interfered with the landlord's mother's quiet and peaceful enjoyment.
56. Accordingly, I am of the view that the view that because of these on-going issues, the landlord was in a position on 18 February 2020 to terminate the tenancy under this section of the Act.
57. As the termination notice meets the timeframe requirements set out in this section of the Act, the notice is valid.

### **Decision**

58. The landlord's claim for an order for vacant possession of the rented premises succeeds.
59. 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.

12 March 2020

Date

[REDACTED]  
John R. Cook  
Residential Tenancies Tribunal