

## Residential Tenancies Tribunal

Decision 19-0781-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 11:10 am on 31 October 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “landlord1” and “landlord2”, respectively, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the tenant”, also participated.

### Issues before the Tribunal

3. The landlords are seeking an order for vacant possession of the rented premises.

### Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 10 and 24 of the *Residential Tenancies Act, 2018*.

### Issue 1: Vacant Possession of the Rented Premises

#### Relevant Submissions

##### The Landlord's Position

6. The landlords and tenant had entered into a rental agreement, commencing 01 August 2019, and a copy of the executed agreement was submitted at the

hearing (█ #1). The agreed rent is set at \$1100.00 per month and it is acknowledged in the rental agreement that the tenant had paid a security deposit of \$550.00.

7. The landlords' residence is attached to tenant's rental unit.
8. In late September 2019, the tenant had surgery and was away from the rental unit for several days. During that time, arrangements were made so that the tenant's son could collect the keys to the unit to bring in some medical equipment for the tenant for when she was released from the hospital.
9. The landlords complained that the tenant's son and his girlfriend moved into the unit and brought their pet dog with them. According to their testimony, the dog was staying at the unit between 26 September and 02 October 2019. The landlords complained that the dog was constantly barking whenever it heard a sound coming from their unit and they stated that they were unable to get any peace.
10. The landlords also complained that the tenant's son was frequently arguing loudly with his girlfriend or the tenant and landlord1 submitted a piece of paper at the hearing (█ #3) listing the dates on which they could hear these altercations. They cite 4 dates: 04 October, 07 October, 10 October and 13 October 2019.
11. Because of the issues with the dog and the disturbances caused by the tenant's son, the landlords issued the tenant a termination notice on 02 October 2019 and a copy of that notice was submitted with their application (█ #2). 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 13 October 2019.
12. The tenant has not vacated as required and the landlords are seeking an order for vacant possession of the rented premises.

### The Tenant's Position

13. The tenant denied that she had been keeping a dog at the unit and she claimed that the dog belonged to her son and he would bring it with him when he visited her after she got out of hospital. She claimed that the dog was not at the unit for very long and hasn't been there since 02 October 2019.
14. She also argued that it was the landlords who had first let the dog into the apartment when they gave her son the keys to the unit while she was in the hospital.
15. The tenant acknowledged that there was one occasion where her son was yelling in the rental unit, but this was just after he had been assaulted by 3 men at a nearby gas station. She stated that her son was very upset at the time and that was the reason he was yelling.

16. The tenant denied, however, that there had been any other occasions where there was any yelling or arguing taking place in her unit and she claimed that if her son and her daughter were to engage in any arguing she would have told them to leave the apartment.
17. The tenant also claimed that the issues with the dog and the arguing were not the real reasons the landlords were looking to have her evicted. She claimed that she had received a notice previous to the one issued on 02 October 2019 and according to that notice the landlords wanted her to move out because she was late paying her rent and because she had triggered the fire alarm at the unit.
18. But the tenant claimed that her rent was always paid on time and she submitted banking slips at the hearing showing the transfers she had made to the landlords.
19. She also submitted into evidence a report from the St. John's Regional Fire Department (█ #1) which states that the alarm sounded as a result of a malfunction.

## **Analysis**

20. 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.*

21. With respect to the issue of rent and the fire alarm, no testimony or evidence was presented by the landlords at the hearing to establish that that was the reason why they were terminating the rental agreement and I therefore will not address those issues in this decision.
22. With respect to the issue of the arguments and the shouting which can be heard coming from the tenant's unit, I also find that that issue has to be set aside. The termination notice submitted with the application was issued to the tenant on 02 October 2019 but no testimony or evidence was submitted at the hearing indicating that any disturbances had taken place prior to the issuance of the notice. The 4 incidences recounted by the landlords took place between 04 October and 13 October 2019 and the landlords stated that the tenant's son was assaulted on 24 October 2019. The termination notice could not have been given to the tenant, then, on 02 October 2019 because of that issue.
23. The remaining issue, then, is the dog.
24. I agree with the landlords that having pets at the unit is a breach of their rental agreement. But where a tenant commits a breach, section 20 the *Residential Tenancies Act, 2018* states that a landlord can issue a 1-month termination notice to the tenant if she fails to comply with a notice to remedy the breach. A 10-day eviction notice is not appropriate in these situations. In any case, although it appears that the dog was at the unit for several days after the tenant had gotten out of hospital, I accept her claim that the dog belongs to her son and that she is not keeping it there as a pet. It is also not disputed that since 02 October 2019 the dog has not been at the rental unit.
25. I was also not persuaded that this matter should be regarded as "unreasonable interference" or that it was so serious that it warranted the issuance of a short, 10-day termination notice under section 24 of the *Act*, quoted above.
26. The tenant submitted a CD-ROM at the hearing containing all of the text-messages she had exchanged with the landlords and there is only 1 complaint in all of those exchanges where the landlords had complained about the barking—that was on 01 October 2019. Those exchanges do not show that this was an ongoing issue or that the tenant had been unreasonable with the landlords. As

evidence, in response to that complaint, the tenant had the dog removed the following day.

27. As the landlords have failed to establish, on the balance of probabilities, that the tenant had been unreasonably interfering with their rights, their privacy or with their peaceful enjoyment, I find that they were not in a position, on 02 October 2019, to issue a termination notice under section 24 of the *Act*.

### **Decision**

28. The termination notice issued to the tenant on 02 October 2019 is not a valid notice.
29. The landlords' claim for an order for vacant possession of the rented premises does not succeed.

07 November 2019

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Date

  
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John R. Cook  
Residential Tenancies Tribunal