

## Residential Tenancies Tribunal

Decision 20-0010-01

Michael Greene  
Adjudicator

---

### Introduction

1. The hearing was called at 9:30 am on 11 March 2020 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing. (*Affirmed*)
3. The respondent, [REDACTED], hereafter referred to as the tenant participated in the hearing. (*Affirmed*)
4. The details of the claim were presented as a written monthly rental agreement with rent set at \$600.00 per month and due on the 1<sup>st</sup> of each month. It was stated that there was a security deposit in the amount of \$300.00 collected on this tenancy on or about 05 April 2017. The landlord issued two termination notices:
  - a. (1) a notice dated 07 February 2020 for the intended termination date of 14 February 2020 under section 22 of the *Residential Tenancies Act, 2018* (**Exhibit L # 2**) and;
  - b. (2) a notice dated 07 February 2020 for the intended termination date of 14 February 2020 under Section 24 of the *Residential Tenancies Act, 2018* (**Exhibit L # 3**).
5. 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 they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

## **Preliminary Matters**

6. The Application for Dispute Resolution was served via Registered Mail and as such would be determined served on 18 February 2020 as per section 42(6) of the *Residential Tenancies Act, 2018*.

## **Issues before the Tribunal**

7. The landlord is seeking the following:
  - a) Vacant possession of the rented premises.

## **Legislation and Policy**

8. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
9. Also relevant and considered in this case are
  - a. Sections 22, 24, 34 and 35 of *the Act*,

## **Issue 1: Vacant Possession**

### **Relevant Submissions**

#### Landlord Position

10. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
11. The landlord testified that the tenant has blocked access of entry to the property to the landlord for the purpose of doing an inspection and the workers were unable to gain access to the property to complete necessary repair work.
12. The landlord testified that there was a leak in the unit and an assessment and repairs were required. The landlord advised the tenant via text that entry to the property would be required to assess the damages and then to complete the required repairs.

13. The landlord testified that the workers that were sent to the rental unit advised that the property was a mess and that they would not return to the unit to complete the repairs until the unit was cleaned. The landlord did not call the workers as witnesses in this matter nor did he supply any sworn statements from them regarding their statements to himself.
14. The landlord also stated that he was trying to sell the property and that his real estate agent will not show the property to any prospective purchasers as a result of the condition of the unit. Similarly, the agent was not called as a witness, nor was there any sworn statements presented to support the landlord's statements.
15. The landlord testified that on or about January 29, 2020, he advised the tenant via text message that he would be doing an inspection on February 5, 2020. The landlord testified that when he arrived to the unit, he found a note on the door that the tenant was not at home and there was an alarm set, but to contact him at a number left on the note. The landlord advised that he did not contact the number nor did he enter the property at this time. He further stated that before he could attempt entry into the property, he had to shovel the driveway and walkways to gain access to the unit.
16. The landlord set a new inspection date via text message for February 7, 2020. Upon arrival he advised that the note was still on the door, but this time he knocked and the tenant answered and provided access to the landlord for his inspection.
17. The landlord testified that the property was a mess and submitted photos (**Exhibit L # 1**). The landlord testified that he was not pleased with the condition of the unit with dirt all through the property, bags of garbage left in the kitchen and the stench was unbearable.
18. The landlord testified that on his exit from the property, he provided the tenant with two termination notices:
  - a. **Exhibit L # 2**: Notice dated 07 February 2020 for the termination date of 14 February 2020 under section 22 and;
  - b. **Exhibit L # 3**: Notice dated 07 February 2020 for the termination date of 14 February 2020 under section 24
19. The landlord testified that he notified the tenant on January 28, 29 and 31<sup>st</sup> to clean the property and the landlord claims it was not done.

## Tenant Position

20. The tenant claims that the landlord is being unreasonable and “nit picking on him”. The tenant stated that he has lived at the unit for three years without incident. He stated that he does not drink or party and does not do drugs. He stated that he has not blocked access to the unit from anyone nor has he prevented anyone from viewing the unit. The tenant has acknowledged placing a note in the door window indicating an alarm as a deterrent to break-ins. He further added that he did put a contact number on the note as well. The tenant admitted that his place was a little untidy and stated that he missed garbage day that week and could not leave the bags outside as the town police would issue a summons as it could attract rodents. Lastly, the tenant indicated that he kept the walkways clear.

## **Analysis**

21. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 22, 24 and 34 as well as the service requirements identified in section 35.
22. The issue of interference with peaceful enjoyment of the property (Section 22) is related to the landlord’s inability to gain access to the property for an inspection and to complete the work required as a result of a leak in the unit.
23. The landlord has provided hearsay evidence in regard to the entry to complete work, as the workers were not present to testify nor was there any sworn statements presented to speak to the facts of what was happening regarding the entry to the property. The landlord’s statements that worker X advised that they would not enter the unit until it is clean is merely third party evidence and not reliable.
24. Additionally, the landlord stated that the tenant refused entry to the property by placing the note on the door indicating that an alarm system was in place. The landlord himself testified that he did not enter, nor did he contact the number on the note, but simply left without entry. Further, on the second attempt of 07 February 2020, there was no problem of entry.
25. A notice of entry to the property is exactly that “a notice being issued under the *Residential Tenancies Act, 2018*” and has specific requirements. Section 34 outlines the requirements for a notice:
26. *Section 34 reads:*

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.

27. It is apparent that the text message of the landlord (**Exhibit L # 4**) notifying the tenant of an entry to the property did not follow the requirements as indicated above. This would then render the notice as issued not valid and the tenant would not have been required to allow entry. It is by mutual consent that entry on 07 February 2020 was granted by the tenant and in doing so the landlord was permitted to enter.
28. The issue of keeping the property clean is a separate issue but is common with the notice to enter the property. The same analysis above regarding this applies here as well. The landlord is stating that the tenant has failed to keep the property clean as required by the legislation. He references the pictures of the property (**Exhibit L # 1**) stating that they clearly demonstrate that the tenant's property was not clean. The landlord also stated that the stench in the property was unbearable.
29. Conversely, the tenant has stated that his property was a bit untidy but not in the condition as stated by the landlord. There was some questions raised concerning the pictures. The tenant stated that the photos were taken by the workers during their inspection at or about 28 January 2020. It is apparent that there were no photos taken during the landlord's inspection of 07 February 2020. This calls into question on the condition of the property at the time of the landlord's inspection.
30. There appears to be some misunderstanding of process and the requirements of notice with respect to what notice is to be issued, in what form and when it is to be issued. The issuance of a notice under section 22 of the *RTA, 2018*, refers back to a statutory condition (Section 10). I will list the two relevant sections first, then explain:

*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:*

*2. Obligation of the Tenant - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.*

*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.*

31. A landlord who is looking to terminate a tenancy based on a contravention of the statutory condition 10(1) 2 is first required to issue the tenant a notice to comply with the section. Again, I refer above to the requirements of any notice under the *RTA, 2018*. Once the required three days or what is considered reasonable has passed, the landlord may issue a termination notice for a specified date not less than 5 days after the notice has been served. The landlord would not be able to terminate a tenancy without first providing the proper notice to the tenant giving an opportunity to first correct the contravention.
32. In this matter, the landlord has stated that he asked the tenant on three separate occasions (Jan 28, 29 and 31<sup>st</sup>) to clean up the unit via text message. On the 7 February 2020 when the landlord visited the property, he claims that the property was still a mess and as such issued the termination notice (**Exhibit L # 2**).
33. The requirements within a notice are at issue in this section as well. Referring to section 34 above, it can be seen that the text messages of the notification of the contravention of the statutory conditions, do not comply with the requirements under section 34. As such, it is as though the tenant has not been provided with a notification of the contravention.
34. As the landlord has failed to provide a proper notice to comply with a contravention of the statutory condition (10)(1)2, the termination notice identified as **Exhibit L # 2** is determined to be not valid.
35. Further, the landlords claim that his peaceful enjoyment of the property was contravened when the tenant refused initial entry does not hold as the tenant was not provided with a proper notice of entry as required by section 34 of the *RTA, 2018*. As a result, there was no requirement for the tenant to allow entry to the unit.
36. Additionally, it cannot be held that the repair workers or real estate agent would not attend the property because of its cleanliness as this was not supported with first hand testimony or statements from those individuals. The only attempt at supporting this part of the claim was third hand information which is hearsay and unreliable. As such, the termination notice issued by the landlord under section 24 of the *RTA, 2018* is determined not proper or valid.
37. The landlord issued a termination notice under section 24 of the *Residential Tenancies Act* by placing a copy on the rented premises. Section 24 requires that the landlord provide notice to the tenant that the rental agreement is terminated and the tenant is required to vacate the property on a specified date not less than 5 days after the notice has been served. The evidence of the landlord has not been accepted as described above. The merits of the landlord's claim has not been satisfied.
38. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 2 & 3**), I find the notices were served on 07 February 2020 with a termination date of 14 February 2020. As established above, the landlord has failed to prove the merits of the claims beyond the balance of probabilities. I

further find that as the date of termination identified on the notice is not less than 5 days after the notice has been served and the date the tenant is required to move out. The termination notice is not technically compliant with the requirements of section 24(1) as the landlord has failed to show that the tenant was in contravention of the *RTA, 2018*.

39. According to the reasons identified above, I find that the termination notices issued by the landlord are not proper or valid. Therefore, the landlord is not entitled to an order for vacant possession of the property.

### **Decision**

40. The landlord's claim for vacant possession fails.

### **Summary of Decision**

41. The landlord's claim for vacant possession fails.

23 March 2020

---

**Date**



---

**Michael Greene**  
**Residential Tenancies Tribunal**