

## Residential Tenancies Tribunal

Decision 20-0024-01

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at 9:30 am on 27 May 2020 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland 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, did not participate in the hearing – **Absent and Not Represented.**
4. The details of the claim were presented as a written fixed term rental agreement commencing on 01 May 2020 and set to expire on 30 April 2021. Rent is set at \$850.00 per month and due on the 1<sup>st</sup> of each month. There was a security deposit in the amount of \$400.00 collected on the tenancy on or about 01 May 2020. The landlord issued a termination notice dated 03 May 2020 for the intended termination date of 10 May 2020 under Section 22 and 24 of the *Residential Tenancies Act, 2018*.
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 tenant, [REDACTED], was not present or represented at the hearing. The Tribunal's policies concerning notice requirements and hearing attendance has been adopted from the *Rules of the Supreme Court, 1986*.

- a. Rule 29.05(2)(a) states *a respondent to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date* and, 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 he/she has been properly served.*

The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **08 May 2020** by serving the original documents to the email: [REDACTED]. A copy of the sent email was attached to the affidavit.

The tenant has had **13 days** to provide a response.

7. As the tenant was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded in the tenant's absence.

### **Issues before the Tribunal**

8. The **Landlord** is seeking the following:
  - a) Vacant possession of the rented premises
  - b) Hearing expenses

### **Legislation and Policy**

9. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
10. Also relevant and considered in this case are Sections 22, 24, 34 and 35 of *the Act*, and Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF.*

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

#### Landlord Position

11. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
12. The landlord testified that she is looking to have her property returned as per section 22 and 24 the *Residential Tenancies Act, 2018.*

13. The landlord testified that the rental agreement is a fixed term tenancy (**Exhibit L # 1**) set to expire on 30 April 2021. The landlord further testified that a notice to terminate was issued on 03 May 2020 under Section 22 & 24 of *the Act* (**Exhibit L # 2**) to terminate the tenancy on 10 May 2020. The landlord testified that the notice to terminate was served by email and text message to the tenant on 03 May 2020. The landlord indicated that as of the hearing date (27 May 2020), the tenant remained in the unit. There is 1 adult living in the unit.
14. The landlord testified that there were a number of reasons for the issuance of the notice. First, the landlord testified that the tenant was to be the only occupant of the property and almost immediately the landlord stated that her boyfriend came around the property. The landlord suggested that the boyfriend was living there with the tenant in contravention of the rental agreement.
15. Secondly, the landlord testified that the tenant placed her belongings in the personal storage space of the landlord which was not in the rental agreement. The landlord testified that she served the tenant a Notice of Repairs (**Exhibit L # 3**), to have the belongings removed from the area as of 07 May 2020 and testified that as of the indicated date the tenant failed to remove her belongings. The landlord referred to photos of the area and items in question (**Exhibit L # 4**) taken on 30 April 2020 and 22 May 2020 respectively.
16. Thirdly, the landlord testified that on or about 11 May 2020 the tenant and her friend were making a significant amount of noise as they exited the property and referred to the photos of the two in the driveway (**Exhibit L # 4**). She testified that on the same evening, the tenant and her boyfriend returned home at 11:45pm approximately and were making noise from then until about 2:40am. The landlord did not provide any support for the noise being made on either occasion other than to say that the tenant told her she was making noise to annoy her.
17. The landlord testified that the tenant has turned the heat in the unit to 30°C which she feels is placing her life in danger. The landlord testified that the heating system is a hot water radiation system and the thermostat in the apartment is controlling the lower level of the building. The landlord presented a picture of the thermostat (**Exhibit L # 4**) and as well in this photo also showed an image of a cigarette pack and lighter in the bathroom.
18. The landlord testified that she contacted Sun Heating to look at the furnace as she could smell something burning. The landlord called ■ as a witness who testified that he was asked to look at the thermostat because the landlord could smell something burning. ■ stated that there was no electrical components burning and that the thermostat had a loose wire which was tightened. He indicated that this wire would not cause the thermostat to go to extreme level of heat or to cause any burning smell. He stated that he was positive that the smell was cigarette smoke and not electrical components burning. The witness testified he did not see the cigarette pack or lighter during his visit.

19. Lastly, the landlord testified that on or about 19 May 2020 the tenant asked to speak with the landlord personally and on 20 May 2020 the tenant had a group of visitors over and the landlord heard them talking “.....will have to go through the attic.....”. The landlord testified she didn’t know what they were talking about and that it is making her extremely nervous.
20. The landlord submitted a letter from her physician (**Exhibit L # 5**) which indicates that the tenant is reporting extreme stress as a result of the current rental situation.
21. The landlord is seeking vacant possession of the property (1 Adult).

## **Analysis**

22. 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.
23. Section 24 requires that where tenant contravenes statutory condition 7(a) as 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.
24. Section 22 requires that where tenant contravenes statutory condition 2 as set out in subsection 10(1), the landlord can give the tenant notice requiring the tenant to comply with the condition. Within three days of issuing the notice to comply 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.
25. The issue then for this tribunal is to determine if the tenant in this matter either breached statutory condition 2 or statutory condition 7(a) of section 10(1) of the *Residential Tenancies Act, 2018* which reads:

***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.***

**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.***

26. On examination of the termination notice issued and submitted into evidence **(Exhibit L # 2)**, I find the notice was served on 03 May 2020 with a termination date of 10 May 2020. I 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 in full technical compliance with the requirements of section 22 (3) and 24 (2) which identify the technical requirements of the termination notice. On examination of the termination notice, I find that all these criteria have been met.
27. The section 24 notice that has been issued requires that the applicant show on the balance of probabilities that there was just cause for the issuance of this short notice. The landlord's evidence regarding how she claims the tenant interfered with the peaceful enjoyment of the landlord is simply not supported or corroborated. I do not accept the evidence of the landlord in this matter. I question the photo evidence regarding the cigarette pack and lighter in the bathroom given the landlord witness did not see this during his visit. Additionally, it is apparent that the landlord wanted to terminate the tenancy only days into a fixed term agreement. The landlord issued a notice to terminate and then began to build a case for the notice after the issuance. I refer to the landlords' testimony regarding noise disturbance on or about May 11, 2020. This indicated event would have been after the terminate date on the notice. I question has the landlord desire to terminate the tenancy, potentially precipitated some of the claimed events. There was no apparent cause to issue a section 24 notice on or before 03 May 2020 and as such I do not accept the landlords' position.
28. The landlord's position is that the tenant was making extreme noise at the rental unit. This position is supported only in the statements of the landlord. There was no evidence or witnesses presented to support the claim. She testified that the Police were called to the property, yet they were not called or subpoenaed as witnesses. The landlord further testified that the tenant has guests (tenant's boyfriend) over to the property which causes issues for the landlord. The landlord cannot control the ability of a tenant in her own unit to have guests. This does not constitute any sort of interference with the landlord unless it can be shown that the guest is disturbing the peace.
29. It should be noted here that the landlord has presented scenarios of this tenancy that may very well constitute a breach of agreement, if indeed they can be substantiated. For example, the notion of smoking in the unit where it is clearly stated in the rental agreement that there is to be no smoking. If it can be demonstrated that there was smoking in the unit, then this would be a breach of the agreement, and would constitute a notice under section 20 of the RTA. The landlord has not issued a notice for section 20.

30. The landlord has failed to establish and support that there was any sort of interference with peaceful enjoyment and as such the termination notice issued under section 24 is determined to be not valid and have no effect in law.
31. Similarly, the section 22 notice that has been issued requires that the applicant show on the balance of probabilities that there was just cause for the issuance of this short notice.
32. This section of notice being issued is related to only one issue and that is the placing of personal items of the tenant in a storage space belonging to the landlord. The factual evidence is clear related to this issue and is best demonstrated via a time line of events extracted from the testimony of the landlord and evidence presented as follows:

**30 April 2020:** In a Facebook Message (**Exhibit L # 6A**) the tenant asks at 12:54 pm if “she could more some things into the storage room today”. The landlord responds at 1:11 pm “yes”.

**03 May 2020:** The landlord takes a photo of the items in a storage room at 4:07 pm.

**03 May 2020:** The landlord issues a termination Notice (**Exhibit L # 2**) by email and text to the tenant to terminate on 10 May 2020.

**04 May 2020:** The landlord serves the tenant with a Notice to Complete Repairs (**Exhibit L # 3**) by text and email for completion on or about 07 May 2020.

**05 May 2020:** The landlord submits an Application for Dispute Resolution to Residential Tenancies for a hearing date.

**22 May 2020:** The landlord takes a picture of items in the storage room.

33. It is clear from this short timeline above that the landlord has predetermined what would happen by issuing a termination notice prior to issuing a notice to complete repairs. In essence and in laymen’s terms, she has put the cart before the horse.
34. Section 22 is very specific as it relates to the issuance of a notice under this section and reads:

***Notice where tenant's obligation not met***

**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.*

35. As can be seen in the highlighted section above, it states that within three days **after** a notice under subsection 1 has been provided (the notice to comply), the notice to terminate the rental agreement can be issued. It is clear that the landlord terminated the tenancy before giving the notice to comply and in doing so has failed to follow the guidelines of section 22 as set out.
36. As such, the landlords notice under section 22 of the *Residential Tenancies Act, 2018* is hereby determined to be not valid and of no effect in law.
37. As identified above, the landlord testified that the termination notice was served via email and text message which are permitted methods of service identified under section 35.

*section 24 (2) and 22 (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.*

*section 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.*

38. According to the reasons identified above, I find that the termination notice issued by the landlord to be not valid as the landlord has failed to provide corroborating evidence to support the issuance of the short notice. Therefore, the landlord's claim for vacant possession fails.

### **Decision**

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

### **Issue 3: Hearing Expenses**

#### Landlord Position

40. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (██████████) (**Exhibit L # 7**). The landlord is seeking this cost.

### **Analysis**

41. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlord is considered a reasonable expense and are provided for with in Policy 12-1 *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF* in the event the claim has been successful. As the landlord's claim has failed, I find the landlord is responsible to cover these reasonable expenses.

### **Decision**

42. The landlord shall cover their own hearing expenses.

### **Summary of Decision**

43. The landlord's claim for vacant possession and hearing expenses fails.

03 June 2020

**Date**

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