

## Residential Tenancies Tribunal

Decision 19-0028-03

Michael Greene  
Adjudicator

---

### Introduction

1. The hearing was called at 1:49 pm on 24 April 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The respondent, [REDACTED], hereafter referred to as the tenant, did not participate in the hearing.
4. The details of the claim were presented as a verbal monthly rental agreement with rent set at \$650.00 per month and due on the 1<sup>st</sup> of each month. It was stated by the landlord that a security deposit in the amount of \$325.00 was collected on or about June 2018. The landlord issued a termination notice dated 09 January 2019 for the intended termination date of 5 days under Section 23 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 **03 April 2019** by serving the documents to the tenant personally at the rental address. The tenant has had **20 days** to provide a response.

Contact with the tenant was not attainable prior to the hearing as there was no telephone contact information provided on the application or from the landlord.

As the tenant was properly served in accordance with the *Residential Tenancies Act, 2018*, with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded with the hearing in the tenant's absence.

## Issues before the Tribunal

7. The landlord is seeking the following:
  - a) Validity of Notice of Termination (section 23)

## 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 Sections 23, 34 and 35 of *the Act*, and Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

## Issue 1: Validity of a Termination Notice

### Landlord Position

10. The landlord is seeking to have a determination of the validity of a termination notice issued by the landlord on 9 January 2019 under section 23 of the *Residential Tenancies Act, 2018*.
11. The landlord testified that he feels the notice is valid because the tenant is a nuisance tenant. The landlord testified that the tenant is pounding on the floors. Additionally, the landlord testified that the tenant has assaulted him and there is currently a criminal case before the courts but the landlord is unaware of the status of that case. The landlord did not present any material documents or witnesses to support the claim.
12. The landlord submitted into evidence a copy of the termination notice that was issued (Exhibit L # 1) on 9 January 2019 issued under section 23 of the *Residential Tenancies Act, 2018*. The landlord testified that the notice to terminate was served personally by the landlord to the tenant on 09 January 2019. The landlord indicated that as of the hearing date (24 April 2019), the tenant remained in the unit.

### **Analysis**

13. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 23 (2) and 34 as well as the service requirements identified in section 35.
14. The termination notice issued by the landlord under section 23 is a notice that would be issued by a tenant to a landlord (*Notice where a landlord contravenes peaceful enjoyment and reasonable privacy*).
15. Section 23 (1) requires that where a landlord contravenes statutory condition 7(b) set out in subsection 10(1), the tenant may give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises on a specified date not less than 5 days, but not more than 14 days, after the notice was served. On examination of the termination notice issued and submitted into evidence (Exhibit L # 1), I find the notice was served on 09 January 2019 with a termination date of “5 days”. This is not in compliance with section 34 of the *Act*.

16. Sections 19 (4) and 34 identify the technical requirements of the termination notice as identified below. On examination of the termination notice, I find that the notice issued by the landlord is not a proper notice. Specifically, (1) the date the rental agreement terminates is not indicated. Indicating that they have been provided 5 days' notice is not valid under the Act. (2) Additionally, the notice section quoted (23) is not a section that would be issued by the landlord and as such would not be valid.

*section 23 (2)*

*In addition to the requirements under Section 34, a notice under this section shall*

- (a) be signed by the tenant;*
- (b) state the date on which the rental agreement terminates and the tenant intends 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.*

17. As identified in paragraph 12, the landlord testified that he served the termination notice personally which is a permitted method of service identified under section 35.
18. According to the reasons identified above, I find that the termination notice issued by the landlord to be not proper and therefore not valid.

## **Decision**

19. The termination notice issued by the landlord and dated 09 January 2019 is determined to be not valid nor effective in law.

## Summary of Decision

20. The termination notice issued by the landlord and dated 09 January 2019 is determined to be not valid nor effective in law.

3 May 2019

---

**Date**



---

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