

Residential Tenancies Tribunal

Application [REDACTED]
Application [REDACTED]

Decision 21-0163-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am** on **12 May 2021** 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. The applicant was represented by [REDACTED] **Affirmed**.
3. The respondent, [REDACTED] hereafter referred to as the tenant, participated in the hearing – **Affirmed. (left the hearing early & before testifying)**
4. The respondent, [REDACTED] hereafter referred to as tenant2, did not participate in the hearing – **Absent and Not Represented**.
5. The details of the claim were presented as a written fixed term rental agreement set to expire on 31 August 2021, rent set at \$575.00 per month and due on the 1st of each month. There was a security deposit in the amount of \$431.25 collected on the tenancy on or about 29 December 2018. The landlord issued a termination notice dated 29 March 2021 for the intended termination date of 06 April 2021 under Section 24 of the *Residential Tenancies Act, 2018*.
6. 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

7. 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 tenant2 was served with the notice of this hearing on the **14 April 2021** by serving the original documents to the tenant by email: [REDACTED] and providing verification of the address and a copy of the sent email.

A phone call was placed to the tenant's numbers on file:

- For [REDACTED] No answer and a message was left
- For [REDACTED] Tenant answered and advised he wished to attend the hearing and would log in immediately.

Tenant2 has had **27 days** to provide a response.

8. As tenant2 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 tenant2's absence.
9. During the landlord presentation, tenant1 decided to leave the hearing. The hearing continued in his absence.
10. It is noted here that the witness statement is witnessed by the landlord for this matter creating a conflict of interest where the person witnessing the statement holds a perceived power or authority over the person giving the statement and as a commissioner for oaths that should never happen. The witness did testify at the hearing and thereby, this tribunal will rely on the personal testimony of the witness.
11. The landlord called the following witnesses:
 - a. [REDACTED] (adjacent tenant) – *Affirmed*
 - b. [REDACTED] (Landlord Maintenance Worker): - *Affirmed*

Issues before the Tribunal

12. The landlord is seeking the following:
 - a) Vacant possession of the rented premises (Section 24)
 - b) Hearing expenses

13. The tenant is seeking the following:
 - c) Validity (Section 24)

Legislation and Policy

14. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.

15. Also relevant and considered in this case are:
 - a. Sections 24, 34 and 35 of *the Act*,
 - b. Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Vacant Possession of the Rented Premises/Validity of Notice

Landlord Position

16. The landlord is seeking to recover possession of the rented premises located at [REDACTED]

17. The landlord testified that they are looking to have their property returned as per Section 24 the *Residential Tenancies Act, 2018*.

18. The landlord testified that the rental agreement is a written fixed term tenancy with a notice to terminate issued on 29 March 2021 under Section 24 of *the Act* (**Exhibit L # 3**) to terminate the tenancy on 06 April 2021. The landlord testified that the notice to terminate was served by email to the tenant's email addresses on file. The landlord indicated that as of the hearing date (12 May 2021), the tenants remained in the unit. There are 2 adults living in the unit.

19. The landlord testified that the tenants have exhibited behaviors that places the safety of the other tenants at risk. The landlord reported that he has received complaints of aggressive behavior, an allegation of a fire being set inside the property, loud noises (constant arguing, music at all hours, etc.) and allegations of violence involving a weapon. The landlord submitted into evidence a witness

statement from the adjacent tenant, [REDACTED] (**Exhibit L # 6**). [REDACTED] was also called as a witness in this matter.

20. The landlord called [REDACTED] as a witness, who indicated that she has been having issues of noise with the tenants ever since tenant2 moved in to the property. The witness testified that on 22 March 2021, she received a text message from the tenant, [REDACTED] who indicated that his partner was going to hurt him. She stated that she was advised from the tenant that he was attacked with a sword and that during the previous evening a fire was started in the property by his partner.
21. The witness stated that the tenant advised that he had received a peace bond against his partner and that he was not to be around the property any longer. The witness further added that she has seen him on site several times since then. The witness testified that she has a 9 year old daughter and given the propensity for violence and the indication of a fire started, she is scared and frightened for her and her daughter's safety.
22. In addition to these latest incidents the witness indicated that there has been a significant amount of noise (yelling and screaming, loud music) at all hours of the night making it troublesome to sleep when she has to get up for work at 6:00 am.
23. The landlord called a further witness, [REDACTED] – Maintenance Worker who testified that he completed a site inspection of the unit on 26 March 2021 and was advised by [REDACTED] that his partner set a fire near the lamp in the corner of the wall area. He stated that was fire and smoke damage in the unit near the site of the fire.

Analysis

24. The validity of the termination notice is determined by its compliance with the notice requirements identified in Sections 24 and 34 as well as the service requirements identified in Section 35.
25. Section 24 requires that when a premises is rented monthly or on a fixed term, the landlord can 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. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 3**), I find the notice was served on 29 March 2021 with a termination date of 06 April 2021. 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 compliance with the requirements of Section 24.
26. Sections 24 (2) and 34 identify the technical requirements of the termination notice as identified below. On examination of the termination notice, I find that all these criteria have been met.

27. It should be noted that the tenant was seeking the determination of the validity of the termination notice, but failed to continue with the hearing and left before testifying. Determining the validity on cause is also a requirement for the landlords claim and will be determined in any regard.
28. 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 a short notice. The behaviors described by the landlord and corroborated by the witnesses, is concerning for both the landlord and the other tenants of the property.
29. I accept the witness's testimony that at least one of the tenants has exhibited dangerous and potentially criminal anti-social behavior directly affecting the safety and security of all in or around the property. I accept that the tenants have been loud (music and domestic issues) and have created safety issues (a fire set in the unit, threats with a weapon) thereby disturbing the peaceful enjoyment of adjoining neighbors. This is not acceptable in any multi-family buildings or society in general. I am concerned given the anti-social behaviors for the safety of the entire building and the tenant himself. The propensity for violence and the seemingly disregard for the safety of others is disturbing. I find that the tenants have interfered with the peaceful enjoyment of the landlord and adjoining tenants in the building. The landlord has established there was just cause for issuing a short notice under the *Residential Tenancies Act, 2018*.
30. As identified above, the landlord testified that the termination notice was served personally which is a permitted method of service identified under Section 35.
31. According to the reasons identified above, I find that the termination notice issued by the landlord to be proper and valid. Therefore, the landlord is entitled to an order for vacant possession along with an order for any incurred costs to certify the order and all costs associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

Decision

32. The landlord's claim for vacant possession succeeds. The landlord is further awarded costs incurred for the certification of the order or associated with the enforcement of the Possession Order by the High Sheriff of NL.

Issue 2: Hearing Expenses

Landlord Position

33. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL [REDACTED] (**Exhibit L # 5**). The landlord is seeking this cost.

Analysis

34. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlord are 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*. As such, I find the tenant is responsible to cover these reasonable expenses.

Decision

35. The tenant shall pay the reasonable expenses of the landlord in the amount of \$20.00.

Summary of Decision

36. The landlord is entitled to the following:

- a) **Hearing Expenses** \$20.00
- b) **Vacant Possession of the Rented Premises**
- c) **An order for any and all costs charged to certify the order or associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.**

18 May 2021

Date

