

Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0488-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **10:00 am on 16 November 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 landlord1, participated in the hearing. – **Affirmed**.
3. The applicant, [REDACTED] hereafter referred to as landlord2, participated in the hearing. – **Affirmed**.
4. The respondent, [REDACTED] hereafter referred to as the tenant, 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 with rent set at \$900.00 per month and due on the 1st of each month. The agreement is set to expire on 31 August 2021. There was a security deposit in the amount of \$400.00 collected on the tenancy on or about 05 August 2020. The landlords issued two termination notices as follows:
 - a. 1st dated 29 September 2020 for the intended termination date of 31 October 2020 under Section 20 of the *Residential Tenancies Act, 2018*;
 - b. 2nd dated 30 September 2020 for the intended termination date of 06 October 2020 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*.
- 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 landlords show that the tenant was served with the notice of this hearing on the **29 October 2020** by serving the original documents to the tenant via email: [REDACTED] and attaching a copy of the sent email.

The tenant has had **17 days** to provide a response.

A phone call was placed to the tenant's listed number [REDACTED]. A message was left for the tenant on the Message Manager attached to the number.

- 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.
- The claim was amended at the hearing to reflect the legal first name of Landlord2 to be [REDACTED].

Issues before the Tribunal

- The landlords are seeking the following:
 - Vacant possession of the rented premises (Sec 20 & 24)
 - Hearing expenses

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
12. Also relevant and considered in this case are Sections 20, 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

13. The landlords are seeking to recover possession of the rented premises located at [REDACTED]
14. The landlords testified that they are looking to have their property returned as per Section 20 & 24 the *Residential Tenancies Act, 2018*.
15. The landlords testified that the rental agreement is a written fixed term tenancy set to expire on 31 August 2021. The landlords further testified that two notices to terminate were issued as follows:
 - a. 1st dated 29 September 2020 for the intended termination date of 31 October 2020 under Section 20 of the *Residential Tenancies Act, 2018* (**Exhibit L # 30**);
 - b. 2nd dated 30 September 2020 for the intended termination date of 06 October 2020 under Section 24 of the *Residential Tenancies Act, 2018* (**Exhibit L # 29**).
16. The landlords testified that the notice to terminate was served by serving electronically and indicated that as of the hearing date (16 November 2020), the tenant remained in the unit. There is 1 adult living in the unit.
17. Landlord1 testified that the tenant has been interfering with the peaceful enjoyment of the adjacent tenants in the building by creating excessive noise (fighting with her boyfriend and having music loud at all hours of the night). The landlord referred to the videos submitted (**Exhibit L # 10-14, 17- 20 & 22**) to demonstrate the noise.
18. The landlord makes the assertion that the tenant's boyfriend is residing at the property which is in contravention of the agreement and he is part of the constant noise problem.

19. The landlords also went on to say that the tenant has been smoking drugs on the property (Marijuana and Hashish) which is directly against the conditions of the rental agreement as signed and enter into by both parties. The landlords further testified that the smell and smoke is making its way into the rented premises of the upstairs tenants, where there are alleged allergies.
20. The landlords submitted into evidence copies of sworn affidavits from [REDACTED] and [REDACTED] (**Exhibits L # 24 & 25**) both identifying the tenant as smoking drugs on the property (identified as Weed and Hash). The statements further outline incidents of noise and arguments between the tenant and her boyfriend and the boyfriend and his grandmother.

Analysis

21. The validity of the termination notice is determined by its compliance with the notice requirements identified in Sections 20, 24 and 34 as well as the service requirements identified in Section 35.
22. Section 24 requires that when a premises is rented, the landlords 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.
23. Section 20 requires that when a tenant contravenes a material term of the rental agreement the landlord may give the tenant written notice of the contravention and if the tenant fails to remedy the contravention within a reasonable time after the notice has been served, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the premises.
24. Where the landlords give the tenant notice that the rental agreement is terminated, the notice shall be given not less than one month before the end of a rental period where the premises is rented for a fixed term.
25. On examination of the termination notice issued under section 24 and submitted into evidence (**Exhibit L # 29**), I find the notice was served on 30 September 2020 with a termination date of 06 October 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 compliance with the requirements of Section 24.
26. On examination of the termination notice issued under section 20 and submitted into evidence (**Exhibit L # 30**), I find the notice was served on 29 September 2020 with a termination date of 31 October 2020. I find that as the date of termination identified on the notice is not less than 1 month before the end of the rental period, the termination notice is in full compliance with the requirements of Section 20.

27. Sections 20 and 24 (2) and 34 identify the technical requirements of the termination notice as identified below. On examination of the termination notices, I find that all these criteria have been met.
28. The Section 24 and 20 notices that have been issued requires that the applicant show on the balance of probabilities that there was just cause for the issuance of a short notice under the legislation.
29. In reviewing the supportive evidence of the landlords, I note that the rental agreement does indicate that there is to be no smoking or cannabis at the property. Further, I note that the landlords' witnesses state that they can smell cannabis coming up through the apartment and in addition, the videos presented clearly demonstrate that the tenant is smoking a bong on the steps of the apartment directly under the windows upstairs.
30. The witness statement from █ also mentions that the tenant had communicated to her that her and her boyfriend keeps weed in jars in the freezer on the property.
31. The landlords stated that it has been reported that there is constant fighting between the tenant and her boyfriend. The witness statements do support this however, the video recordings submitted at a stretch only demonstrate that in two separate videos there was a discussion held outside in the day time and it was next to an open window in the upstairs unit.
32. The videos submitted by the landlord do not depict any sort of situations where there are arguments between any parties. They do show a female identified as the tenant smoking a bong in the stair well of the apartment, immediately below the open window of the tenants upstairs.
33. It has been indicated the tenant interfered with the peaceful enjoyment of the upstairs tenants by using illicit drugs contrary to the rental agreement and the odor from the illicit drugs is not conducive to peaceful living for the tenants.
34. The rental agreement does limit the use of cannabis at the property and was indicated same in the agreement. There was no counter argument by the tenant as she failed to show but the landlords have indicated that the tenant advised them she had a medical marijuana license for the substance. To that end, the existence of the medical marijuana license may very well be so, however, the license does not give a person authority to smoke in a non-smoking facility or property. In fact, Health Canada discourages the smoking of medical marijuana as smoking is considered a health hazard and there are safer ways of administering the drug.
35. In consideration of the video of the tenant smoking a bong on the steps immediately outside the upstairs tenants' window along with the sworn statements from the tenants upstairs, I find that the tenant has interfered with the peaceful enjoyment of the property affecting the upstairs tenants. Further, I find that the tenant did have cannabis on the property which is a contravention of the

agreed rental agreement. As such, I find that the landlord was justified to issue a termination notice both under section 20 and 24 of the *Residential Tenancies Act, 2018*.

36. The landlords have demonstrated that there was a notion of interference with the peaceful enjoyment of a property by the tenant or someone who was permitted on the premises by the tenant. Every person has the right of peaceful enjoyment and reasonable privacy and one tenant shall not infringe upon the landlords' rights in this regard. The evidence presented by the landlords supports their version of events and I accept this evidence and find the testimony to be credible. I find that the tenant has interfered with the peaceful enjoyment and reasonable privacy of the landlord.

section 20 & 24 (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.*

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.*

37. As identified above, the landlords testified that the termination notice was served by sending it to the email: [REDACTED] which is a permitted method of service identified under Section 35.
38. According to the reasons identified above, I find that the termination notice issued by the landlords to be valid and effective in law. Therefore, the landlords' claim for vacant possession is successful.

Decision

39. The landlord's claim for vacant possession succeeds. The landlords are further awarded costs associated with the enforcement of the Possession Order by the High Sheriff of NL.

Issue 3: Hearing Expenses

Landlord Position

40. The landlords paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL [REDACTED] (**Exhibit L # 31**). The landlords paid a fee for the Commissioner for Oaths Service in the amount of \$50.00 (**Exhibit L # 32**). The landlords paid a further fee to Canada Post for the service of evidence (**Exhibit L # 33**) in the amount of \$16.70. The landlords are seeking these costs.

Analysis

41. I have reviewed the testimony and evidence of the landlords in this matter. The expenses incurred by the landlords 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* in the event the claim has been successful. As the landlords' claim has been successful, I find the tenant is responsible to cover these reasonable expenses.

Decision

42. The landlords' claim for hearing expenses succeeds in the amount of \$86.80.

Summary of Decision

43. The landlords are entitled to the following:
- a. An order of Vacant Possession
 - b. Costs associated with the enforcement of the Possession Order by the High Sheriff of NL.
 - c. An Order for Hearing Expenses in the amount of \$86.80

20 November 2020

Date

Michael Greene
Residential Tenancies Tribunal