

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0085-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am on 13 April 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, 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 set to expire on 30 June 2021, rent set at \$995.00 per month and due on the 1st of each month. There was a security deposit in the amount of \$497.50 collected on the tenancy on or about 09 December 2020. The landlord issued a termination notice dated 15 February 2021 for the intended termination date of 21 February 2021 under Section 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 **15 March 2021** by serving the original documents to the tenant by registered mail: [REDACTED] and attaching the tracking information from Canada Post.

A phone call was placed to the tenant's number on file [REDACTED] with no answer and a message was left.

The tenant has had **28 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.
8. The landlord called the following witnesses:
 - a. [REDACTED] Maintenance Worker – *Affirmed*
 - b. [REDACTED] Maintenance Worker – *Affirmed*
 - c. [REDACTED] Leasing Coordinator - *Affirmed*

Issues before the Tribunal

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

Legislation and Policy

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

11. 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

Landlord Position

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

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

14. The landlord testified that the rental agreement is a written fixed term tenancy with a notice to terminate issued on 15 February 2021 under Section 24 of *the Act (Exhibit L # 9)* to terminate the tenancy on 21 February 2021. The landlord testified that the notice to terminate was served personally to the tenant on 15 February 2021. The landlord indicated that as of the hearing date (13 April 2021), the tenant remained in the unit. There is 1 adult living in the unit.

15. The landlord testified that the tenant has exhibited behaviors that are not welcomed in the property. The landlord reported that the tenant:

- a. has been playing his music loud and creating noise disturbances for the other tenants at all hour in the night;
- b. has been leaving his garbage in the laundry room without regard for others and in breach of the rental agreement;
- c. has been consistently and continually locking his keys in the property or losing his key cards;
- d. has exhibited aggressive behavior towards the maintenance workers of the landlord such the Royal Newfoundland Constabulary (RNC) were contacted.

16. Regarding the complaints of noise from other tenants, the landlord that the tenants did not feel comfortable appearing as a witness for fear of reprisal. The landlord indicated that they have a 24 hour emergency line from Tele-link which has recorded at least two complaints of noise, the first on 23 December 2020 at 1:28 am (**Exhibit L # 1**). The landlord further testified that a subsequent warning letter (**Exhibit L # 2**) was generated and delivered to the tenant regarding this incident. The second complaint was from 24 December 2020 at 5:15 pm (**Exhibit L # 3**) and a final warning letter (**Exhibit L # 4**) was generated and issued to the tenant.

17. In addition to the noise complaints, the landlord further testified that the tenant has been identified as the person responsible for leaving his garbage in the laundry room instead of placing it in the appropriate garbage dumpsters outside adjacent to the building. The landlord testified that the tenant was issued a warning letter for the garbage issue (**Exhibit L # 5**).
18. The landlord further testified that the tenant has consistently and continually locks his keys in the property or loses his keys thereby creating a lockout situation. The landlord testified that this has occurred many times and they have attempted to work with the tenant in this regard to no avail.
19. The landlord advises that during one recent lockout, the tenant became aggressive in nature toward the maintenance staff and the RNC were called to assist. The landlord referred to an incident report (**Exhibit L # 7**) from [REDACTED] from the maintenance department. [REDACTED] testified that he attended to a call for a lockout and proceeded with his work. He reported that the tenant and his neighbor were out in the hallway sitting on a chair drinking beer and became aggressive in nature to the point of getting up in [REDACTED] face without any mask and feared for his safety. [REDACTED] testified that he left the area, called the backup maintenance worker and also called the RNC who attended the scene. Additionally, [REDACTED] recalled several noise complaints that he personally attended to regarding this tenant.
20. The landlord further called [REDACTED] as a witness to testify regarding the tenant leaving garbage in the laundry room. The landlord testified that this is not acceptable behavior and the witness confirmed that she addressed the garbage issue with the tenant and confirmed that the tenant was responsible. She indicated that he claimed he was not aware where to place the garbage. She also indicated that on approximately 6 or 7 times, she personally addressed several lockout situations with the tenant regarding lost keys.

Analysis

21. 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.
22. 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 # 9**), I find the notice was served on 15 February 2021 with a termination date of 21 February 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.

23. 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.
24. The Section 24 notice that has been issued also 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 and evidence, is concerning for both the tenant and the other tenants of the building. The witness testimony from █ is by far the most concerning. The aggressive nature of the interaction and the seemingly lack of care or concern for the maintenance workers health and safety by the tenant cannot be accepted as reasonable behavior. One should not have to feel threatened enough to call the Police to safely administer their work related duties.
25. Additionally, the tenant has exhibited anti-social behavior by seemingly playing excessively loud music and thereby disturbing the peaceful enjoyment of adjoining neighbors. This is not acceptable in most multifamily buildings. This behavior has not been corroborated by an actual witness, but given the totality of the evidence including the testimony from the maintenance workers and the call reports from the 24 hour message line, I find that on the balance of probabilities, the tenant has been playing music loud with no care or concern for his adjoining neighbors.
26. After a complete review of the evidence presented, I find that the tenant has 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*.
27. As identified above, the landlord testified that the termination notice was served personally which is a permitted method of service identified under Section 35.
28. 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

29. 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

30. 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 # 8**). The landlord is seeking this cost.

Analysis

31. 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

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

Summary of Decision

33. 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.**

20 April 2021

Date

