

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0160-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **11:00 am on 17 May 2021** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing. The landlord 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 monthly rental agreement with rent set at \$795.00 per month and due on the 1st of each month. There was a security deposit in the amount of \$600.00 collected on the tenancy on or about 01 May 2019. The landlord issued a termination notice dated 22 December 2020 for the indicated termination date of 31 March 2020 under Section 18 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 **13 April 2021** by serving the original documents to the tenant personally at the rented premises.

The tenant has had **33 days** to provide a response.

A phone call was made to the number provided by the landlord for the tenant [REDACTED] and there was no answer. A message could not be left at the message manager for this number was not set up.

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 18, 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 they are looking to have their property returned as per the *Residential Tenancies Act, 2018*.
13. The landlord testified that a notice to terminate was issued under Section 18 of *the Act* (**Exhibit L # 2**) to terminate the tenancy on 30 March 2020. The landlord testified that the notice to terminate was delivered personally on 22 December 2020 as per section 35 of the *RTA, 2018*. The landlord indicated that as of the hearing date (17 May 2021), the tenant remained in the unit. The landlord further testified that to the best of her knowledge, there is 1 adult living in the unit.
14. The landlord indicated that there was an error in the termination notice respective of the termination date and she hadn't noticed it until at the hearing. She indicated that the termination date should have read 31 March 2021 and not 2020.

Analysis

15. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 18 (9) and 34 as well as the service requirements identified in section 35.
16. Section 18 (2)(b) requires that when a premises is rented for month to month, the landlord may terminate the tenancy and the tenant is required to vacate the residential premises on a date not less than 3 months before the end of the rental period. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 2**), I find the notice was served on 22 December 2020 with an indicated termination date of 31 March 2020.
17. It is clear that the termination date is an administrative mistake as indicated by the landlord during her presentation. It is not the responsibility nor the jurisdiction of the tribunal to correct technical errors of a legal document served in a dispute. It is the responsibility of the tribunal to adjudicate based on the evidence presented. I find that the date of termination identified on the notice is not at least 3 months before the end of the rental period. The indicated termination date is given as 9 months prior to the issuance of the notice. I find that the termination notice is not in full compliance with the requirements of section 18 (2) (b).

Sections 19 (4) and 34 identify the technical requirements of the termination notice as identified below. On examination of the termination notice, I find it technically flawed and does not meet the criteria required.

18. As identified above, the landlord testified that the termination notice was served by serving it personally which is a permitted method of service identified under section 35.

section 18 (9)

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

- (a) *be signed by the landlord;*
- (b) *be given not later than the first day of a rental period*
- (c) *state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*
- (d) *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.*

19. According to the reasons identified above, I find that the termination notice issued by the landlord to be improper and not valid. Therefore, the landlord is not entitled to an order for vacant possession of the property and therefore the claim for vacant possession fails.

Decision

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

Issue 2: Hearing Expenses

Landlord Position

21. 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 # 3). The landlord is seeking this cost.

Analysis

22. 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 the landlords claim has failed, I find the tenant is not responsible to cover these expenses.

Decision

23. The landlord's claim for hearing expenses fails.

Summary of Decision

24. The landlord's claim fail.

18 May 2021

Date

