

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0200-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am** on **14 June 2021** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and 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 tenant1, participated in the hearing. (*Affirmed*).
5. The respondent, [REDACTED] hereafter referred to as tenant2, participated in the hearing. (*Affirmed*).
6. The details of the claim were presented as a written monthly agreement with rent set at \$1100.00 per month and due on the 1st of each month and a security deposit in the amount of \$550.00 was collected on or about 01 June 2019.
7. In a proceeding under the *Residential Tenancies Act*, 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

8. The application was AMENDED at the hearing to add [REDACTED] as a landlord on this file.
9. The affidavit submitted by the landlord shows that the tenants were served with the notice of this hearing on the **02 June 2021** by serving the original documents to the tenants personally at the rented premises.

Issues before the Tribunal

10. The landlords are seeking the following:
 - a) Vacant possession of the rented premises;

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 19, 34 and 35 of *the Act*,

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] and further indicated that there are 2 adults living in the property.
14. The landlords testified that they have been having trouble with late rent from these tenants continually. The landlords testified that the tenants fell into arrears in January 2021 and on 21 January 2021 a termination notice was issued (**Exhibit L # 1**) under section 19 of the Act. Similarly, the same thing happened on February 16, 2021 (**Exhibit L # 2**) and again on March 12, 2021 (**Exhibit L # 3**).
15. The landlords further added that they have yet to receive rent for June 2021. All rent up to and including 31 May 2021 has been paid.

Tenant Position

16. The tenants acknowledged that they were in arrears currently and have been late with rent since January 2021. The tenant testified that she has had some medical issues since December which has made it tough.
17. The tenants acknowledged being late as the landlords testified and receiving the termination notices as presented.

Analysis

18. Established by undisputed statement of fact above, the rental agreement is a written monthly tenancy. The validity of the termination notice is determined by its compliance with the notice requirements identified in Sections 19. (1)(b), (4) and 34 as well as the service requirements identified in Section 35.
19. The issue of rental arrears has been determined above confirming that the tenants owe rent to the landlords.
20. Section 19. (1)(b) requires that rent be overdue for 5 days or more before the landlord may give the tenant a termination notice to vacate the property not less than 10 days after the notice is served on the tenant. Evidence is such that the landlords have issued three notices to the tenants within a 12 month period. On examination of the third termination notice issued and submitted into evidence (**Exhibit L # 3**), I find the notice was served on 12 March 2021 with a termination date of 23 March 2021. As established above and undisputed by the tenants, rent had been in arrears since January 2021 as acknowledged by the tenants. As this is the third termination notice issued to the tenants for non-payment of rent within a 12 month period, payment of the amount outstanding does not void the termination notice
21. I further find that as the date of termination identified on the notice is 10 clear days between the date the notice was issued and the date the tenants are required to move out, the termination notice is in full compliance with the requirements of Section 19. (1)(b).
22. Sections 19. (4) and 34 below identify the technical requirements of the termination notice. On examination of the termination notice, I find it all these criteria have been met.

Section 19. (4)

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.

23. As identified above, the landlords testified that the termination notice was served personally which is a permitted method of service identified under Section 35.
24. According to the reasons identified above, I find that the termination notice issued by the landlords to be proper and valid. Therefore, the landlords are entitled to an order for vacant possession of the property along with an order for any and all costs associated with certifying the orders or with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

Decision

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

Summary of Decision

26. The landlords are entitled to the following:

- a) Vacant Possession of the Rented Premises
- b) Any incurred costs associated with certifying the attached orders
- c) Any incurred costs from the High Sheriff of NL associated with enforcement of the attached Possession Order

16 June 2021

Date

