

## Residential Tenancies Tribunal

Application 2024-0693-NL

Seren Cahill  
Adjudicator

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### Introduction

1. Hearing was held on 27-August-2024 at 1:56 pm.
2. The applicant, [REDACTED], attended via teleconference.
3. The respondent, [REDACTED], also attended via teleconference.

### Preliminary Matters

4. The applicant provided a duly sworn affidavit of service (LL#1) stating that she served the respondent via registered mail on 5-August-2024. The appropriate supporting documents were also provided (LL#2, LL#3). The applicant confirmed that for some time he has refused any contact from the applicant, including multiple registered letters. He stated he was therefore unaware of this claim until I called him on the morning of the hearing. I was satisfied that the respondent was duly served and proceeded with the hearing.
5. The respondent raised the issue of jurisdiction. He stated he has an ownership interest in the property and is therefore not a tenant under the *Residential Tenancies Act, 2018* (the *Act*). He says he paid moneys on a monthly rate to the applicant for a time, but this was not rent and was a repayment of a debt from their time of separation, and he had accordingly stopped payment once the debt was rectified. The applicant denied this and asserted she is the sole owner of the property. She says she allowed the respondent to stay in the property so long as he paid rent, which he did so for some time before ceasing. In order to ascertain the truth of the matter while avoiding delay, I suggested I could allow additional submissions to be emailed to our office up to two weeks from the date of the hearing. These submissions would be limited to the issue of ownership. Parties agreed with the timeline I suggested and accordingly I advised them they had until 4:30 pm Newfoundland Standard Time on 4-September-2024 to provide evidence of ownership.
6. The applicant provided a digital copy of a 6-page document (LL#4). It appears to be a sworn and witnessed deed of conveyance dated 31-May-1996 in which the respondent releases, assigns, transfers, and conveys unto the applicant all the property which forms

the premises at issue in this hearing. A survey of the property is attached. This deed recognizes that the applicant and the respondent previously held the property jointly, which is consistent with the testimony of both parties.

7. The respondent did not submit any evidence that he retained an ownership interest in the property.
8. Based on the above, I conclude that the applicant is the sole owner of the property and that a landlord-tenant relationship exists under s. 3(3)(a), i.e., that the respondent occupied the premises and has paid rent to the landlord. This tribunal therefore has jurisdiction in this case.
9. Hereinafter, the applicant shall be referred to as the landlord and the respondent shall be referred to as the tenant.

### **Issues before the Tribunal**

10. Should the landlord's claim for vacant possession be granted?

### **Legislation and Policy**

11. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Act*.
12. Also considered and referred to in this decision are sections 19(1), 19(4), and 34 of the *Act*, as reproduced here:

#### **Notice where failure to pay rent**

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

(a) where the residential premises is rented from week to week and the amount of rent payable by a tenant is overdue for 3 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 3 days after the notice is served on the tenant; and

(b) where the residential premises is

(i) rented from month to month,

(ii) rented for a fixed term, or

(iii) a site for a mobile home, and

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

- (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.

### **Requirements for notices**

**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.

## **Issue 1: Vacant Possession**

### Landlord's Position

- 13. The landlord stated that she has not received rent for the property for years and has submitted a valid termination notice accordingly. She asserts that she has a right to vacant possession of the property.

### Tenant's Position

- 14. The tenant agreed he has not paid rent in years as he asserts ownership of the property. He has not received a termination notice as he refuses all mail from the landlord.

## **Analysis**

- 15. In order to receive an order of vacant possession, a landlord must have issued a valid termination notice. The landlord provided LL#5, which she says she served on the tenant.
- 16. LL#5 is a termination notice in writing in the form prescribed by the minister. It contains the name and address of the recipient. It identifies the residential premises for which it is given. It specifies that it was issued under s. 19 and s. 24 of the *Act*. It therefore complies with s. 34 of the *Act*.
- 17. LL#5 was signed by the landlord. It states the date on which the rental agreement is to terminate and the tenant is to vacate the premises. It was served on the tenant via prepaid registered mail, in accordance with s. 35(2)(e) of the *Act*. It therefore complies with s. 19(4) of the *Act*.

18. LL#5 was issued on 20-June-2024. At this point rent had been overdue for more than 5 days. Parties agreed that the tenant had made no payment to the landlord for years. It gives a termination date of 9-July-2024, which is not less than ten days after the LL#5 would have been considered served under s. 35(5) of the *Act*. LL#5 therefore complies with s. 19(1) of the *Act*.
19. LL#5 complies with all relevant provisions of the *Act* and is therefore valid under s. 19. It is unnecessary for me to consider whether it would also be valid under s. 24 and therefore I decline to consider it.

### **Decision**

20. The valid termination notice gave a move out date of 9-July-2024. The tenancy agreement ended on that date. Insofar as the tenant still has possession of the premises, he does so illegally. The landlords' application for an order of vacant possession succeeds.
21. The landlord was successful in their claim and so are entitled to have their reasonable hearing expenses covered. In this case, the landlords seek the \$20 application fee and provided a receipt for the \$12.61 cost of registered mail.

### **Summary of Decision**

22. The tenant shall vacate the premises immediately.
23. The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sherriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession.
24. The landlord is granted an order of possession.
25. The tenant shall pay to the landlord \$32.61 of hearing expenses.

11-September-2024

Date

  
Seren Cahill  
Residential Tenancies Office