

Residential Tenancies Tribunal

Decision 19-0107-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:30 am on 04 December 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing. The landlord was represented by [REDACTED] – **Sworn** and [REDACTED] – **Sworn**.
3. The respondent, [REDACTED] - **Sworn**, hereafter referred to as the tenant, participated in the hearing.
4. The details of the claim were presented as a written monthly rental agreement with rent set at \$263.00 per month and due on the 1st of each month. There was no security deposit collected on the tenancy. The landlord issued a termination notice dated 31 July 2019 for the intended termination date of 31 October 2019 under Section 18(2)(b) 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 affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **05 November 2019** by serving the Application for Dispute Resolution documents to the tenant personally at the rental address.
7. The affidavit submitted by the tenant shows that the landlord was served with the notice of this hearing on the **22 November 2019** by serving the Application for Dispute Resolution documents to the landlord personally at the office of the landlord at [REDACTED].

Issues before the Tribunal

8. The **Landlord** is seeking the following:
 - a) Vacant possession of the rented premises
 - b) Hearing expenses
9. The **Tenant** is seeking the following:
 - c) Validity of the Termination Notice

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 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: Validity of Notice/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 18(2)(b) the *Residential Tenancies Act, 2018*.

14. The landlord testified that the rental agreement is a month to month tenancy (**Exhibit T #1**). The landlord testified that a notice to terminate was issued under Section 18 of *the Act* (**Exhibit T # 2**) to terminate the tenancy on 31 October 2019. The landlord testified that the notice to terminate was served personally by the landlord to the tenant on 31 July 2019. The landlord indicated that as of the hearing date (04 December 2019), the tenant remained in the unit. The understanding from the tenant, there is 1 adult and 3 children (aged 9, 4 and 1 year) living in the unit.

Tenant Position

15. The tenant testified that she received the notice to terminate the tenancy (**Exhibit T # 2**).
16. The tenant testified that it is her opinion that the landlord is terminating her tenancy based on a racially motivated opinion of the neighbors. The tenant had indicated the explicit comments that have been hurled at her children from the neighbors. She stated that she has done nothing wrong and has complied with all requests of the landlord yet she was issued a termination notice. She stated she disagrees with being issued the notice to terminate.
17. The tenant had submitted several pieces of information to be submitted as evidence as what was referred to as sworn statements of individuals. These items were reviewed by this tribunal and determined that they were not sworn statements, some were unsigned, and were not directly relevant to the matters before the tribunal. It was determined that these items were at best hearsay evidence and determined to be not admissible.

Analysis

18. 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.

19. Validity can also be considered as it relates to retaliation under restrictions as set out in section 29 of the *Residential Tenancies Act, 2018* which reads:

Termination for invalid purpose

29. (1) A landlord shall not

(a) terminate or give notice to terminate a rental agreement; or

(b) directly or indirectly coerce, threaten, intimidate or harass a tenant or a member of a tenant's family, in retaliation for, or for the purpose of deterring the tenant from, making or intervening in a complaint or application in relation to a residential premises.

(2) Where a tenant who is served with a notice of termination of a rental agreement believes that the landlord has contravened subsection (1), he or she may, not later than one month after receiving the notice, apply to the director under section 42 for an order declaring that the rental agreement is not terminated.

20. The tenant did not file an application seeking a determination of the validity of the notice until 25 October 2019, which is more than 1 month beyond the date of receiving the termination notice (31 July 2019). As such, the question of retaliation cannot be considered as a reason to render the notice of termination to be not valid.
21. 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 T # 2**), I find the notice was served on 31 July 2019 with a termination date of 31 October 2019. I find that as the date of termination identified on the notice is at least 3 months before the end of the rental period and the date the tenant is required to move out, the termination notice is 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 that all these criteria have been met.

22. As identified above, the landlord testified that the termination notice was served 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.*

23. 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 of the property, along with an order for any and all costs associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

Decision

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

Issue 3: Hearing Expenses

Landlord Position

25. 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 # 1**). The landlord further paid a fee to the process server (**Exhibit L # 2**) in the amount of \$30.00 for the service of documents to the tenant. The landlord is seeking these costs.

Analysis

26. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlord is 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

27. The tenant shall pay the reasonable expenses of the landlord in the amount of \$50.00.

Summary of Decision

28. The landlord is entitled to the following:

- a) **Vacant Possession of the Rented Premises.**
- b) **An order for any and all costs associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.**
- c) **Hearing expenses in the amount of \$50.00**

09 December 2019

Date


Michael Greene
Residential Tenancies Tribunal