

Residential Tenancies Tribunal

[REDACTED] Decision 19-249-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:10 pm on 06 May 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing. He was represented by [REDACTED] from Legal Aid NL.
3. The respondent, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord".
4. The landlord's Resident Manager, [REDACTED], was called as a witness.

Issues before the Tribunal

5. The tenant is seeking a determination of the validity of a termination notice issued to him on 28 February 2019.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this case is sections 18, 29 and 42 of the *Residential Tenancies Act, 2018* and section 25 of the *Residential Tenancies Act, 2000*.

Preliminary Matters

8. This is the second application this Tribunal has heard concerning this tenancy. A previous application ([REDACTED]) was heard on 18 August 2015, by this

adjudicator, and as a result of that hearing it was found that a termination notice, which had been issued to the tenant on 30 June 2015, was invalid and of no effect as it was issued in retaliation, in contravention of section 25 of the *Residential Tenancies Act, 2000* (termination for invalid purpose). The landlord was also ordered to refrain from issuing any further termination notices to the tenant until after 31 October 2015.

Issue 1: Was application filed in time?

9. The tenant moved into the rental complex in April 2011. The current rent is set at \$875.00 per month. That rent is paid on the tenant's behalf by the Department of Advanced Education, Skills and Labour (AESL) and the tenant also receives a subsidy from Newfoundland Labrador Housing (NLH).
10. With his application, the tenant submitted a termination notice which was issued to him on 28 February 2019 (█ #1). That notice was issued under section 18 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 31 May 2019.
11. Through this application the tenant is challenging the validity of this notice. It is his contention that this notice, like the one issued to him on 30 June 2015, referenced in Preliminary Matters, above, is invalid as it was issued for an invalid purpose, as contemplated under section 29 of the *Residential Tenancies Act, 2018* which states:

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.

12. The landlord pointed to subsection (2) of this section of the *Act* and he argued that the tenant's application was filed outside of the 1-month time-limit period outlined here. As the tenant was served with the termination notice on 28 February 2019, application had to have been made to this Section by 01 April

2019. According to the application, although it is dated by the tenant on 26 March 2019, it was only processed by this Section on 17 April 2019.

13. The tenant's representative testified that he did file the original application on time and he stated that he had asked a Residential Tenancies Officer (RTO) with this Section if anything needed to accompany the application. He stated that there was no mention at that time that a fee was required and he stated that his application was not rejected or refused at that time. On 09 April 2019 an RTO contacted the tenant's representative and informed him that he had to amend the application to include the name and address of the landlord. The tenant's representative testified that the RTO had informed him that this outstanding issue had no effect on the calculation of when the application was filed.
14. The tenant's representative also stated that on 12 April 2019 he was informed by an RTO, for the first time, that he was required to pay a fee of \$20.00 before his application could be processed. He stated that when he first made application there was no demand that he pay a filing fee and he pointed out that there is no indication in the *Residential Tenancies Act, 2018* or on the application form that a fee of \$20.00 is required. He also stated that he was not able to find any regulations whereby the minister had prescribed that fee nor is that information on this Section's website.
15. The tenant's representative argued that if the application had been refused when he first filed it, because he had not paid the prescribed fee or because it was missing required information, he would have corrected those oversights and he would have ensured that the complete application was filed on time.

Analysis

16. Section 42 of the *Residential Tenancies Act, 2018* states:

Application to director

42. (1) A landlord or tenant may, within one year after termination of the rental agreement, apply to the director to determine

- (a) a question arising under this Act or the regulations;***
- (b) whether a provision of a rental agreement has been contravened; or***
- (c) whether a provision of this Act or the regulations has been contravened.***

(2) An application under subsection (1) shall be submitted to the director in the form and with the fee set by the minister.

17. Based on the paperwork and e-mail correspondence this Section has had with the tenant's representative, I find that the form titled "Application for Dispute

Resolution" was sent to this Section on 26 March 2019 by courier. The application was then processed on 17 April 2019, after the \$20.00 filing fee was paid.

18. On my reading of ss. 42.(2) an application consists of both the form and the fee set by the minister and it would only be when both the form and the fee have been submitted to this Section that we could say that an application had been made.
19. I note that in Part 13 of the Notice of Hearing, Application and Fees, it does state that a fee of \$20.00 is required to file an application, but I have confirmed with staff at this Section that this document is only provided to the applicant after that payment has been made and after their application has been processed. No mention is made on the Application for Dispute Resolution that a fee is required or that the fee has been set at \$20.00.
20. Accordingly, I find that it would be unfair to deny a hearing of the tenant's application on the grounds that the fee had not been paid prior to 01 April 2019. I agree with him that that deficiency ought to have been pointed out to him in a timely manner so that it could have been corrected and so he could have met the deadline. I also agree with him that if the onus falls on the applicant to determine that the minister had set a fee, that information out to be readily available on the application form, on the Section's website, in the Regulations or in a readily accessible public proclamation of the minister.
21. For these reasons, I decided to hear the tenant's application despite the fact that the fee was not paid prior to the 1-month time-limit set out in section 29.(2).

Issue 2: Validity of Termination Notice

Relevant Submissions

The Tenant's Position

22. The tenant stated that in the months leading up to receipt of the termination notice on 28 February 2019 he had been complaining to the landlord about a number of different issues. It was his argument at the hearing that it was because he had been making these complaints that the landlord had issued him that termination notice, in violation of s. 29 of the Act.

Carpet Cleaner

23. The tenant stated that the common hallway outside of his apartment is carpeted and the resident manager uses an industrial-strength cleaner on this carpet. He stated that the resident manager sometimes would dump that carpet cleaner right outside of his door and leave it there all day long before vacuuming it at the end of the day.

24. The tenant stated that the smell of the carpet cleaner particularly bothered him and he found it difficult to breathe in its presence. He testified that because of that cleaner he had to visit his doctor and the emergency department at the hospital.
25. He testified that he complained to the resident manager about that issue but he refused to refrain from using that cleaner unless he was provided with a doctor's note. The tenant stated that he provided the manager with a doctor's note in January 2019 and a copy was submitted at the hearing (█ #3).

Damage to Car

26. The tenant also stated that his car was vandalized several years ago and instead of providing any help to the tenant, the landlord ordered him to have his car removed from the parking lot. The tenant stated that cameras were installed in the parking lot several years ago but he complained that the landlord had not notified the tenants at the complex that these cameras were installed or that they were being monitored.

Broken Heaters

27. The tenant also stated that the heaters in his corridor and in the main entrance to the complex stopped working sometime in September 2018. He claimed that these heaters generate a significant amount of heat in his apartment and because they were broken he was required to use more electricity in his apartment than he otherwise normally would.
28. At the hearing the tenant submitted a letter he had received from Newfoundland Power on 18 January 2019 (█ #4) stating that his Equal Payment Plan (EPP) monthly charge was increasing from \$150.00 to \$311.00, over double what he was paying the previous year.
29. The tenant claimed that he had complained to the resident manager about these increased charges and he testified that he had been complaining to the landlord, prior to this, about the heaters.

Rental Increase

30. The tenant submitted a copy of a letter (█ #7) he stated was apparently issued to him in September 2018, though he claimed he had no recollection of receiving that letter. This letter is a notice of rental increase and it states that, effective 01 January 2019, the tenant's rent would be increased by \$10.00 to \$875.00. The tenant also submitted a copy of a letter he had received from the landlord on 11 February 2019 (█ #8) informing him that he was in rental arrears in the amount of \$10.00.

31. The tenant claimed that AESL and NLH pay his rent on his behalf and he claimed that he assumed that his rent had been paid in full and on time in February 2019. He testified that he has post-traumatic stress disorder (PTSD) and he is on a limited income and he stated that he contacted the landlord after he received this letter and complained that he did not have any extra money to pay for that increase.

01 February 2019

32. The tenant stated that on 01 February 2019 he contacted a representative from the provincial government inquiring about medically assisted suicide. He stated that his inquiry was misconstrued as a threat that he was going to commit suicide and 2 police officers and a social worker were sent to the residential complex to check on the tenant's wellbeing. When this team arrived at the complex, they were granted entry to the tenant's apartment by the resident manager.

33. The tenant stated that the resident manager had a history of allowing guests into other tenant's apartments and he claimed that he had requested that he not allow anyone into his unit without his permission. The tenant reiterated that he has PTSD and he claimed that this condition was brought on as a result of an incident where he awoke one night to find an intruder in his room holding a knife.

34. The tenant claimed that he was asleep when the police and social worker arrived at his apartment and he was both startled by their entry and angry that the resident manager had let them into his apartment without notice. The tenant acknowledged that he had "reacted badly" when the police entered his unit and stated that "all hell broke loose" as a result.

35. The tenant stated that the resident manager took great offence to his reaction on that date and he claimed that he had held a grudge against him for the way he reacted and this was a major reason why he received an eviction notice at the end of February 2019. He testified that during the remainder of February 2019 the relationship between him and the resident manager was strained and he claimed he would taunt him whenever they crossed paths by waving and saying things like: "bye bye" and "you're gone".

36. The tenant's representative stated that the tenant had threatened the resident manager with legal action when he allowed the police and the social worker into his apartment. He argued that as he had received a termination notice just a few weeks after he had made that threat of taking legal action, that termination notice should be deemed to be retaliatory as the tenant was looking to secure his right, as a tenant, to be provided with notice that there would be entry into his apartment.

The Landlord's Position

37. The landlord denied that he had issued the termination notice to the tenant in retaliation for any of the complaints the tenant had made about the condition of his

apartment or the rental complex. He stated that his company, [REDACTED] [REDACTED], took over management of the rental complex in April 2017 and since then they have been committed to improving the condition of the complex and the apartments. He stated that since his company has taken over, they have installed new carpets and washing machines in the complex and they will soon be re-siding the outside of the complex and installing new windows in all the apartments.

38. With respect to the complaints the tenant had made to the landlord in the months leading up to the issuance of the termination notice, the landlord denied that the notice was issued in retaliation to those complaints. He claimed that he had reacted to those complaints in the same way he reacts to any maintenance complaint made by any other tenant and that was by taking steps to rectify the problem.

Carpet Cleaner

39. The landlord's resident manager, [REDACTED], was called as a witness and he denied that he had used an industrial-strength cleaner on the carpets and stated that he had instead been using Febreze, a deodorizer. He also denied that he had been using that deodorizer outside of the tenant's apartment and claimed that it was only used on carpets near apartments where pet odours were an issue. [REDACTED] acknowledged that that he had received a complaint from the tenant about the smell of the deodorizer and that he was provided with a doctor's note. He responded to the complaint by informing the tenant that the carpets would soon be replaced and that work was carried out approximately 3 weeks ago.

Damage to Car

40. The landlord stated that he cannot be held responsible for damage caused to the tenant's car but he claimed that he had put cameras in place in response to complaints he had received from residents at the complex concerning thefts from vehicles and illegal dumping. He argued that the installation of the cameras was done for the benefit of all the tenants at the complex.

Broken Heaters

41. The landlord also acknowledged that he had received a complaint about the broken heaters and [REDACTED] stated that 1 of the 2 heaters on the tenant's floor was broken. [REDACTED] testified that he was only notified that this heater was broken in mid-December 2018 and he claimed that because it was the Christmas season, he was unable to get a contractor to repair it until mid-January 2019.
42. [REDACTED] pointed out that this heater is used to heat the hallway that the tenant shares with the other tenants on his floor and it is not intended to be a heat source for his apartment. He also claimed that it would have almost no

bearing on the temperature in the tenant's apartment. [REDACTED] also pointed out that the tenant grows and cultivates marijuana in his apartment and he suspects that the tenant's electricity bill had doubled over the past year, not because the heater in the hallway was broken for 1 month, but because the tenant's grow operation required so much electricity.

43. [REDACTED] stated that when he informed the tenant that the broken heater had nothing to do with the increase in his electricity bills the tenant got upset him and he went back into his apartment and slammed the door.

Rental Increase

44. [REDACTED] stated that he had delivered the notice of rental increase to the tenant in September 2018.

45. The landlord stated that these notices are typically issued annually and all of the tenants at the complex would have received a similar notice and he claimed that he had not specifically targeted the tenant. Likewise, the landlord stated that when a tenant fails to pay that increase it is routine for him to send out a second, friendly letter reminding the tenant that their rent had increased so that the arrears do not accumulate and they can get back on track.

46. [REDACTED] stated that he had decided not to knock on the tenant's door to inform his that his rent was \$10.00 short because they were no longer on speaking terms after the incident with the police and the social worker on 01 February 2019.

01 February 2019

47. The landlord submitted an incident report at the hearing ([REDACTED] #1), which was drafted by [REDACTED] on 01 February 2019, concerning the incident with the police and the social worker. He read that report at the hearing. [REDACTED] pointed out that he had knocked on the tenant's door before entering his apartment and he claimed that the only reason he had opened the tenant's door was because he was instructed to do so by the police.

48. In the report, [REDACTED] writes that the tenant "went 'ballistic', yelling at the officers, yelling at me ... threatening me with legal consequences, etc, etc." He stated that the officers were eventually able to get the tenant calmed down and they left after almost 2 hours.

49. [REDACTED] claimed that he and the tenant used to be friends and would frequently visit each other to chat before he was appointed as the resident manager. He stated that they would still chat from time to time since that appointment but he claimed that they are no longer on speaking terms since 01 February 2019 and he claimed that the tenant's problems are solely with [REDACTED].

50. [REDACTED] stated that he had another run in with the tenant on 28 February 2019, after the tenant had received the termination notice. He stated that the tenant came to his apartment and was kicking and banging on his door and [REDACTED] described the tenant as "irate". He stated that the landlord sent the tenant a second notice on that date ([REDACTED] #2) instructing him to refrain from raising any further issues with [REDACTED] about the notice or the apartment and to direct all concerns directly to the landlord.

51. The landlord argued that the termination notice was not issued in retaliation and he pointed out that he could have issued the tenant a termination notice back in October 2015 after the first hearing. Instead, he stated that he allowed the tenant to remain at the unit and since his company took over managing the property in 2017 he had been making every effort to improve the conditions at the complex and in the tenant's apartment. He stated that he allows the resident managers to run the various complexes they manage and he makes decisions based on the information that they provide to him. He stated that he has no personal grudge against the tenant and he also claimed that [REDACTED] cares about all the residents at the complex and that he was looking out for the tenant's well-being when he allowed the police officers into his apartment.

52. He also pointed out that under the *Residential Tenancies Act, 2018* a landlord is entitled to terminate a rental agreement on 3 months' notice, without cause. He claimed that the notice meets the requirements of the *Act* and he is looking to regain possession of the apartment.

Analysis

53. In the decision I wrote in 2015 ([REDACTED]) I determined that the termination notice issued to the tenant was a retaliatory notice as I found that it was issued just hours after the tenant had made complaints to the landlord about the condition of the carpet in his room. That is, I found that there was a direct causal link between the tenant making a complaint and the landlord issuing the notice.

54. I noted at that time, however, that landlords do have a right to terminate a rental agreement with a tenant without having to provide reasons to the tenant or this Tribunal and the only requirement that must be met is that proper notice be given to the tenant. Those notice requirements are spelled out in section 18 of the *Residential Tenancies Act, 2018*, and the relevant subsections state:

Notice of termination of rental agreement

18. (2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises

...

(b) *not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and*

...

(9) *In addition to the requirements under section 34, a notice under this section shall*

(a) *be signed by the person providing the notice;*

(b) *be given not later than the first day of a rental period;*

(c) *state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and*

(d) *be served in accordance with section 35.*

55. I also noted in 2015 that tenants in this province do not have security of tenure and the retaliatory section of the *Residential Tenancies Act* should not be used as a means to gain such tenure. Landlords have a right to determine, on their own, who they want, and don't want, as a tenant. Sometimes a landlord would agree to rent to a tenant and only later realize, after some months or even years, that the tenant is not a good fit, for whatever subjective reasons, and they no longer want to share the same roof with them or have to deal with them on a day-to-day basis. Section 18 allows a landlord, in these circumstances, to terminate the rental agreement even if the tenant has not violated any provision of the lease agreement or the *Act*.
56. On review of the evidence presented at the hearing, I find that the tenant had been making complaints to the landlord and the resident manager about various issues at the complex between December 2018 and February 2019. With respect to the matter of the heaters, the cameras in the parking lot and the carpet cleaner, I was not persuaded, however, that the landlord had issued the termination notice as a result of those complaints and I find that the tenant has failed to establish, on the balance of probabilities, that the notice was issued because he had made those complaints. In each of these cases it seems, rather, that the landlord had actively taken steps to address the issues in the hopes of improving the complex for the sake of the tenant and the other residents.
57. Regarding the rental increase, I again cannot find a case for retaliation. In fact, in this case, it was the landlord who was complaining to the tenant that the rent had not been paid and, if the landlord wished, he could have issued the tenant a termination notice, for cause, under section 19 of the *Act* (notice where failure to pay rent). However, instead of issuing a termination notice, the landlord sent the tenant a friendly reminder letter about the rent that was owed and I accept his claim that this was part of the normal practice of his management company.

58. Based on the testimony I heard at the hearing, it seems more probable that the reason the landlord did decide to terminate the agreement was because of the incident that happened on 01 February 2019 and the subsequent deterioration in the relationship between the tenant and [REDACTED]. [REDACTED] stated that the tenant "went ballistic" when he allowed the police officers and the social worker into his apartment and the tenant acknowledged that he had acted poorly on that occasion and that "all hell broke loose". [REDACTED] stated that their relationship has since soured and they are no longer on speaking terms even though they were once friends.

59. [REDACTED] also stated that in mid-January 2019 the tenant had angrily slammed his door after he had a discussion with the tenant about the increase in his heat bills and on 28 February 2019 [REDACTED] stated that the tenant was banging and kicking his door and yelling because he had been issued a termination notice. Because of the tenant's behaviour and because the relationship between the tenant and [REDACTED] had broken down, the landlord had issued a letter to the tenant to not deal directly with [REDACTED] any longer.

60. It seems to me, then, that it was not because of the complaints the tenant had been making about carpet, heaters, etc. that lead to the issuance of the termination notice but rather because of the behaviour of the tenant towards [REDACTED]. They had a falling out in February 2019 and it seems it was decided that the tenant should move on, that he was not a good fit given that he would have to live under the same roof as the resident manager. As I stated, above, in paragraph 55, although the tenant's behaviour may not meet the threshold of being a violation of his lease or the *Residential Tenancies Act, 2018*, the landlord nevertheless has the right to determine who he does, and does not, rent his apartments to and he may terminate any agreement on just 3 months' notice.

Summary

61. The termination notice issued to the tenant on 28 February 2019 is a valid notice.

23 May 2019

Date

[REDACTED]
John R. Cook
Residential Tenancies Tribunal