

Residential Tenancies Tribunal

[REDACTED] Decision 20-0015-02

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **1:30 am on 21 July 2020** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland via Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing. The landlord was represented by the owner [REDACTED] – **Affirmed** and counsel, [REDACTED] from [REDACTED]
[REDACTED].
3. The respondent, [REDACTED], hereafter referred to as the tenant, participated in the hearing – **Affirmed**.
4. The details of the claim were presented as a written monthly rental agreement with rent set at \$1000.00 per month and due on the 1st of each month. There was a security deposit in the amount of \$400.00 collected on the tenancy on or about 05 February 2020. The landlord issued three termination notices:
 - a. The first dated 04 June 2020 for the intended termination date 30 September 2020 under section 18 of the *Residential Tenancies Act, 2018*;
 - b. The second dated 04 June 2020 for the intended termination date of 10 July 2020 under Section 24 of the *Residential Tenancies Act, 2018*.
 - c. The third dated 04 June 2020 for the intended termination date of 31 July 2020 under Section 20 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 **09 July 2020** by serving the application for dispute resolution document to the tenant's email: [REDACTED] and attaching a copy of the email sent to the tenant.
7. The affidavit submitted by the tenant shows that the landlord was served with the notice of this hearing on the **17 July 2020** by serving the application for dispute resolution document to the landlord's email: [REDACTED] and [REDACTED] and attaching a copy of the email sent to the landlord.
8. The tenant's service on the landlord was not in the time limits required, however, the landlord agreed to waive the right of 10 days of service and agreed to continue with the hearing and the hearing proceeded.
9. The landlord amended the claim at the outset of the hearing to add rent for July 2020 (\$1000.00) that has come due since the filing of the application.
10. The landlord called [REDACTED] ([REDACTED]) (*Affirmed*) as a witness in this matter.

Issues before the Tribunal

11. The landlord is seeking the following:
 - a) Vacant possession of the rented premises (Sec 18/20/24)
 - b) Rent owing
 - c) Compensation for Inconvenience
12. The tenant is seeking the following:
 - d) Validity of Notice(Sec 18/20/24)
 - e) Refund of Rent
 - f) Compensation for Inconvenience
 - g) Payment of Utilities
 - h) Other
 - i) Refund of Security Deposit

Legislation and Policy

13. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.

14. Also relevant and considered in this case are Sections 18, 20, 24, 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/Validity of Notice

Landlord Position

15. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
16. The landlord testified that they are looking to have the property returned as per Section 18/20/24 the *Residential Tenancies Act, 2018*.
17. The landlord testified that the rental agreement is a monthly tenancy (**Exhibit L #2**). The landlord further testified that a number of notice to terminates were issued:
 - a. The first dated 04 June 2020 for the intended termination date 30 Sep 2020 under section 18 of the *Residential Tenancies Act, 2018*; (**Exhibit L # 4**)
 - b. The second dated 04 June 2020 for the intended termination date of 10 June 2020 under Section 24 of the *Residential Tenancies Act, 2018*. (**Exhibit L # 5**)
 - c. The third dated 04 June 2020 for the intended termination date of 31 July 2020 under Section 20 of the *Residential Tenancies Act, 2018*. (**Exhibit L # 6**)
18. The landlord testified that as of the hearing date (21 July 2020), the tenant remained in the unit.
19. The landlord testified that at the very longest time frame they felt that the termination notice issued under section 18 as a no cause notice would be valid and if the other two are determined not valid then they would be seeking a vacant possession order based on the issuance of the no cause notice for 30 September 2020. The landlord testified that the termination notices were issued through email.
20. The landlord testified that the tenant has interfered with the peaceful enjoyment of the adjacent tenants by interfering with the internet usage and for smoking. The landlord called a witness (■) who indicated that she rented a non-smoking unit in a non-smoking building and has an issue with second hand smoke. The witness testified that she has never seen the respondent smoke in his unit but has witnessed the respondent on a regular basis, smoke on the communal deck which she shares with him. She stated that there has never been a problem with smoke until May 2020 when the respondent moved in. Similarly, the witness reported that there was never an issue with the availability of Wi-Fi until the respondent moved into the unit.

21. The witness stated that she first noted the problems on 07 May 2020. She stated that the smell of smoke and weed became so bad that she left the unit to go stay with her parents until the problem is resolved. Additionally, as a result of Covid-19 measures, she started to work from home in March 2020 and this wasn't an issue with respect to the internet connection until May 2020 when the respondent moved into the unit. The witness brought her complaints to the landlord to address.
22. The witness testified that the result of the interference with peaceful enjoyment, she stopped using the communal patio because of the smoke, she is not staying at her unit until the problem is resolved and she is not comfortable in the unit.
23. The landlord further notes that the tenant's agreement is a non-smoking agreement. The landlord testified that the tenant is smoking inside the unit or at the patio door and the smoke is blowing back into his unit and the neighbors. The landlord addressed the tenant about smoking at the patio door and the tenant simply moved to the common patio just outside his door.
24. The landlord stated that it is his belief that the smoking is a violation of the rental agreement and the notice issued under section 20 would be valid.
25. The landlord is seeking an order of vacant possession for the property for all three termination notices issued in this claim.

Tenant Position

26. The tenant testified that he has not altered or messed with the internet Wi-Fi signal in the building. The tenant testified that there may very well be an issue with the incoming signal (ie. Not enough bandwidth for all users), but hasn't tampered with anything. The tenant made the statement that there is one internet service in the building which is not satisfactory.
27. The tenant testified that he does not smoke inside the unit. He claims to smoke immediately outside the door on the patio. The tenant acknowledged that in the beginning of May 2020 he did attempt to make marijuana edibles which means you had to decarb the marijuana in the oven which he claims made an awful stink. He said he would never try it again.
28. The tenant acknowledged smoking a lot on the patio but never in the unit.

Analysis

29. The validity of the termination notice is determined by its compliance with the notice requirements identified in Sections 18, 20, 24 and 34 as well as the service requirements identified in Section 35.

30. Section 20 requires that when a premises is rented monthly, the landlord can give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises not less than 1 month before the end of the rental period where a tenant contravenes a material term of the rental agreement.
31. Section 22 requires that when a premises is rented monthly, the landlord can give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served where a tenant contravenes statutory condition 2 in subsection 10(1) of the *Residential Tenancies Act, 2018*
32. Section 18 requires that when a premises is rented monthly, the landlord can give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises not less than 3 months before the end of the rental period where the residential premises is rented from month to month.
33. The notice issued under section 24 was issued as the landlord claims the adjacent tenant's peaceful enjoyment of her property was interfered with directly from the respondent. In reviewing the evidence, I find that there is a communal patio/deck on this building that would have at least been shared by the respondent and the witness in this matter. The adjacent tenant (witness) rented her property which included free access to the communal patio to also enjoy peacefully. The evidence is clear that the respondent was continuously smoking on this communal patio which in essence forms a part of both units. As a non-smoking building, the patio then, given it is shared by multiple parties, would also be an extension of the unit and also be a non-smoking area where all parties can enjoy the deck. I accept the witness testimony that her peaceful enjoyment of the deck and her unit was interfered with by the respondent without any apparent care of concern.
34. I will address the validity of the notice issued under section 20 first. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 6**), I find the notice was served on 04 June 2020 with a termination date of 31 July 2020. I find that as the date of termination identified on the notice is not less than 1 month 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 20. As such, I find that the notice issued under section 20 has been supported and would be valid.
35. I do not accept that landlord evidence that the respondent tampered with the internet and Wi-Fi in the building. It is certainly reasonable that internet system itself could be the cause. In the absence of any technical support from the internet supplier in the form of a technician witness, I find that this portion of the claim is not supported.

36. Further discussions of the issuance of the second notice on 04 June 2020 under section 24 will deal with the notice of interference of the peaceful enjoyment of an adjacent tenant. Evidence is such that there were no issues with smoking at the unit prior to the respondent moving into the property. It has been determined above that the tenant was smoking on a communal patio which forced the adjacent tenant to be unable to use this common space for which she was paying rent to use. This is certainly interfering with a tenant's rights given that the units are non-smoking units.
37. Sections 24 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.

Section 24

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.*

38. The section 24 notice that has been issued requires that the applicant show on the balance of probabilities that there was just cause for the issuance of a short notice. The landlord has provided the evidence required to determine the validity of the notice.
39. The landlord testified that the termination notice was served by email which is a permitted method of service identified under Section 35.
40. The issuance of a no cause notice is determined on the technical requirements of section 18 and the absence of any coercion or intimidation. On review of the evidence, I note that the landlord issued a no cause notice and there appears to be no indication of any type of intimidation, coercion or other activity that could make this notice rendered invalid for cause. As such, I find the notice issued under section 18 is valid.
41. According to the reasons identified above, I find that the termination notices issued by the landlord under section 18, 20 and 24 to be valid and effective in law. Therefore, the landlord's claim for vacant possession is successful.

Decision

42. The landlord's claim for vacant possession succeeds for the specified date of 31 July 2020. The landlord is further awarded costs associated with the enforcement of the Possession Order by the High Sheriff of NL.

Issue 2: Rent Owning/Refund of Rent

Landlord Position

43. The landlord testified that he entered into a rental agreement with the respondent (**Exhibit L # 2**) which was to commence on 01 June 2020. The landlord stated that the respondent asked if he could move a few things in early and he responded that this is not a problem. The landlord testified that the respondent moved in on or about 05 May 2020 and remained in the unit without paying rent for May 2020.
44. In addition, the landlord testified that the respondent has not paid rent for July 2020 as well and submitted the rent ledger (**Exhibit L # 1**).
45. The landlord further submitted a copy of emails from the tenant dated 08 May 2020 which clearly indicated that the tenant was occupying the property in May 2020.
46. The landlord offered the tenant a goodwill gesture to pay only ½ of a month's rent for May (\$500) but the tenant declined the offer.
47. The landlord disputes any sort of claim by the tenant for a refund of rent as baseless and without merit.

Tenant Position

48. The tenant is seeking a refund of rent for May – September in the amount of \$5000.00 plus compensation for 60 days of rent for notice.
49. The tenant testified that he wasn't sure if he was entitled to this, but was claiming for it because of various violations of the Residential Tenancies Act by the landlord. There was no elaboration on the specifics of the violations.
50. The tenant testified that he rented the property because he was having marital problems. Once he secured the property, he had nowhere else to stay. The tenant indicated he moved in around mid-May 2020 but failed to pay rent for May or July. The tenant also acknowledged not paying the extra \$100.00 for the Security Deposit.

Analysis

51. Rent is required to be paid for use and occupation of a rented premises as set out in the rental agreement at the onset of the tenancy. The evidence is clear that the agreement was established for 01 June 2020. Additionally, I accept the testimony of the landlord that the offer for the tenant to move some items into the property did not constitute an offer for the tenant to move into the unit early at no charge.
52. The tenant testified that he moved into the property around mid-May 2020. I do not accept this testimony as the tenant himself has indicated that he had nowhere to go. It is the position of this tribunal that the tenant intended to obtain a key to the property and move into the unit as early as he could. I agree with the landlord that the email string indicates that on or about 08 May 2020, the tenant occupied the unit.
53. I find the tenant responsible for the rent for the month of May 2020 in the amount of **\$784.56** calculated as $(\$1000.00 \times 12 \text{ months}) = \$11964.00 \div 366 \text{ days} = \$32.69 \text{ per day} \times 24 \text{ Days} = \784.56 for the period of May 8 – 31, 2020.
54. I further find the tenant responsible for rent for July 2020 up to the day of the hearing in the amount of **\$686.49** calculated as $(\$1000.00 \times 12 \text{ months}) = \$11964.00 \div 366 \text{ days} = \$32.69 \text{ per day} \times 21 \text{ Days} = \686.49
55. I further find the tenant responsible for a daily rate of rent in the amount of **\$32.69** commencing 22 July 2020 and continuing until the day the landlord obtains vacant possession of the property.
56. Regarding the tenant's claim for a refund of rent in the amount of \$5000.00. There has been no evidence led to remotely suggest that the landlord has violated the Act. Additionally, the claim being made by the tenant is extreme and in fact I find to be frivolous, vexatious and certainly without merit. As such, the tenant's claim for refund of rent fails.

Decision

57. The landlord's claim for rent succeeds as determined below:
 - a. Rent owing for May 8 – 31, 2020 \$784.56
 - b. Rent Owing for July 1 – 21, 2020 686.49
 - c. **Total Arrears** **\$1471.05**
 - d. A daily rate of rent in the amount of **\$32.69** commencing 22 July 2020 and continuing until the day the landlord obtains vacant possession of the property.

Issue 3: Compensation for Utilities - \$204.56

Tenant Position

58. The tenant testified that as a result of the inadequate internet service, he had to connect to his hot spot on his data plan for his phone. The tenant submitted into evidence a copy of the two cellphone bills (**Exhibit T # 1**).

Landlord Position

59. The landlord testified that it is their contention that the tenant is responsible for the problems with the internet and therefore compensation should not be awarded.
60. Additionally, the landlord added that there was no additional charges to the tenant's account, and therefore no compensation is warranted.

Analysis

61. Any issue of compensation is done with the notion to bring parties back to where that normally would be without disadvantaging either party.
62. The tenant prior to the tenancy had an account with Bell for set amount of data and cell service. The cellphone bills presented into evidence by the tenant show no additional charges to the account for July and only \$6.38 in additional unspecified charges for June. There is no specifics on what these additional charges are for: long distance, data usage or other charges. It is the responsibility of the tenant in this portion to identify the specific claimed charges.
63. The landlord would not be held accountable for a service that the tenant normally pays for, in any regard.....only extra charges if warranted.
64. In this portion of the claim, I find that the tenant has not clearly shown how he has been forced to pay extra charges on his cellphone bill and as such, this portion of the claim fails.

Decision

65. The tenant's claim for utilities fails.

Issue 4: Compensation for cleaning - \$300.00

Tenant Position

66. The tenant is claiming for 8 hours of required cleaning to the unit.
67. The tenant is claiming that when he moved into the unit, there was grease on the ceiling and the property was not clean. He testified that in addition to the initial cleaning, the landlord would enter the property without PPE and, therefore, he had to professionally clean the unit.
68. The tenant then added that the unit was not professionally cleaned, but he himself had to clean from top to bottom. The tenant submitted photos (**Exhibit T # 2**) taken from May – July to demonstrate the conditions.

Landlord Position

69. The landlord disputes the claim of the tenant stating the property was clean and when the landlord approached the property, he went only to the door. He stated that if he went into the property, he was invited by the tenant.
70. It is the landlord's position that the tenant's testimony shows discrepancies.

Analysis

71. It is the responsibility of the tenant in this matter to support the claims being made. The tenant first indicated that the unit was professionally cleaned and then recanted to add that he himself cleaned the unit.
72. Additionally, the photos submitted by the tenant were claimed to have been taken in May – July, 2020. However, when the meta data of the individually files were examined, it was determined that all the photos were taken in July 2020.
73. Lastly, the two parties disagree on the facts, that the landlord entered the property. The tenant's testimony in this hearing has shown discrepancies and lacks credibility.
74. The claim is for 8 hours of labor which would total only \$157.20 at the current self-labor rate of \$19.65 per hour. This then leaves questions as to where the number of \$300.00 comes from.
75. In this portion of the claim, I find that the tenant's testimony to be not credible. As such, this portion of the claim fails.

Decision

76. The tenant's claim for cleaning fails

Issue 5: Compensation for extra psychological visits - \$200.00

Tenant Position

77. The tenant is claiming compensation for extra psychological visits required as a direct result of the stress the landlord has added.
78. The tenant has not provided any invoices for the claimed visits.

Landlord Position

79. The landlord disputes the claim for the Psychological visits. The landlord states there is no support for the claim.
80. It is the landlord's position that the tenant's testimony is not credible.

Analysis

81. It is the responsibility of the tenant in this matter to support the claims being made. The tenant has provided no support to indicate that the landlord has provided any undue stress during the tenancy. The evidence is such that the landlord was attempting to rectify several issues involving the tenant at the rental property. It is within the right of the landlord to address issues as they arise at a rental property.
82. In this portion of the claim I find that the tenant's testimony to be not credible. Additionally, there were no invoices presented for the claimed charges. As such, this portion of the claim fails.

Decision

83. The tenant's claim for Psychological visits fails

Issue 6: Hearing Expenses

Landlord Position

84. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (████████) (**Exhibit L # 8**). The landlord is seeking this expense.

Tenant Position

85. The tenant paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (████████) (**Exhibit T # 3**). The tenant is seeking this expense.

Analysis

86. I have reviewed the testimony and evidence of the landlord and tenant in this matter. The landlord's claim has been successful whereas the tenant's claim has failed. 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 the landlord's reasonable expenses in addition to his own hearing expenses.

Decision

87. The tenant shall pay the reasonable expenses of the landlord in the amount of \$20.00.

Summary of Decision

88. The landlord is entitled to the following:

- a) Rent Owing (see above for periods covered).....\$1471.05
- b) Hearing Expenses \$20.00
- c) **Total Owing to the Landlord** **\$1491.05**
- d) An order of Vacant Possession
- e) Costs associated with the enforcement of the possession Order by the High Sheriff of NL.

31 July 2020

Date

Michael Greene
Residential Tenancies Tribunal