

Residential Tenancies Tribunal

Decision 20-0028-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 1:45 pm on **10 June 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 [REDACTED] – **Affirmed**.
3. The respondent, [REDACTED], hereafter referred to as the tenant, did not participate in the hearing – **Absent and Not Represented**.
4. The details of the claim were presented as a written monthly rental agreement with rent set at \$625.00 per month and due on the 1st of each month. There was a security deposit in the amount of \$372.00 collected on the tenancy on or about 14 January 2020. The landlord issued a termination notice dated 07 May 2020 for the intended termination date of 13 May 2020 under Section 24 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 tenant, [REDACTED], was not present or represented at the hearing. The Tribunal's policies concerning notice requirements and hearing attendance has been adopted from the *Rules of the Supreme Court, 1986*.
 - a. Rule 29.05(2)(a) states *a respondent to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date* and, and where the respondent fails to attend the hearing, Rule 29.11(1) states *that the hearing may proceed in the respondent's absence so long as he/she has been properly served*.

The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **29 May 2020** by serving the application for dispute resolution document to the tenant personally at the rented premises. The tenant has had **12 days** to provide a response.

There was no phone contact information on file to contact the tenant prior to the start of the hearing.

As the tenant was properly served in accordance with the *Residential Tenancies Act, 2018*, with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded with the hearing.

Issues before the Tribunal

7. The **Landlord** is seeking the following:
 - a) Vacant possession of the rented premises
 - b) Hearing expenses

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
9. Also relevant and considered in this case are Sections 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 of the Rented Premises

Landlord Position

10. The landlord is seeking to recover possession of the rented premises located at █
██████████.
11. The landlord testified that she is looking to have their property returned as per section 24 the *Residential Tenancies Act, 2018*.
12. The landlord testified that the rental agreement is a month to month tenancy and further testified that a notice to terminate was issued on 07 May 2020 under Section 24 of *the Act* (**Exhibit L # 1**) to terminate the tenancy on 13 May 2020. The landlord testified that the notice to terminate was served personally by the landlord to the tenant on 07 May 2020. The landlord indicated that as of the hearing date (11 June 2020), the tenant remained in the unit. There is 1 adult living in the unit.
13. The landlord testified that the tenant was inherited and accepted from the previous tenant that was living in the unit. She stated that all was going well until late February when she received a call from the previous tenant stating that the respondent was dealing drugs from the property.
14. The landlord further testified that she then started receiving calls from the current tenants regarding the behavior of the respondent and that there were shady people constantly frequenting the property. She stated that on 04 May 2020 there was a report of a party at the property. On 05 May 2020, there was a report of people coming and going and creating a disturbance.
15. The landlord did not call any of the current tenants as witnesses in this matter.
16. The landlord called █ as a witness who stated that he was with the landlord at one point when the tenant closed the unit door in the face of the landlord. He stated that they were seeking entry to the unit at the time without the proper notice of entry and the tenant refused entry.
17. The landlord is seeking vacant possession of the property.

Analysis

18. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 24 and 34 as well as the service requirements identified in section 35.

19. Section 24 requires that when a premises is rented for month to month, 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. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 1**), I find the notice was served on 07 May 2020 with a termination date of 13 May 2020. I find that as the date of termination identified on the notice is not less than 5 days after the notice has been served 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 24 (2) 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.
20. 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 failed to lead any sort of evidence that would even remotely indicate that the tenant has interfered with the peaceful enjoyment of the landlord or any adjoining tenants. The landlord has stated that they attempted entry to the unit without proper notice and the tenant refused entry. This is well with the legal rights of the tenant to refuse entry without proper notice. The landlord was fully aware that there is no supporting or corroborating evidence that will support the issuance of a short notice under section 24.
21. 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 24 (2)

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.*

22. According to the reasons identified above, I find that the termination notice issued by the landlord to be not valid as the landlord has failed to provide corroborating evidence to support the issuance of the short notice. Therefore, the landlord's claim for vacant possession fails.

Decision

23. The landlord's claim for vacant possession fails.

Issue 3: Hearing Expenses

Landlord Position

24. 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 # 2**). The landlord is seeking this cost.

Analysis

25. 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* in the event the claim has been successful. As the landlord's claim has failed, I find the landlord is responsible to cover these reasonable expenses.

Decision

26. The landlord shall cover their own hearing expenses.

Summary of Decision

27. The landlord's claim for vacant possession and hearing expenses fails.

16 June 2020

Date


Michael Greene
Residential Tenancies Tribunal