

Residential Tenancies Tribunal

[REDACTED] Decision 20-0036-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am on 08 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 landlord1, participated in the hearing. **Affirmed**.
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 commencing on 01 March 2019 with rent set at \$600.00 per month and due on the 1st of each month. There was a security deposit in the amount of \$300.00 collected on the tenancy on or about 28 Feb 2019. The landlord issued two termination notices dated 15 June 2020 for the intended termination date of 21 June 2020 under Section 22 and 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 affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **25 June 2020** by serving the original documents personally to the tenant.

The tenant has had **13 days** to provide a response.

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 22, 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 [REDACTED].
11. The landlord testified that he is looking to have his property returned as per section 22 and 24 the *Residential Tenancies Act, 2018*.
12. The landlord testified that the rental agreement is a written monthly rental agreement with rent set at \$600.00 per month exclusive of utilities. The landlord further testified that two notices to terminate were issued on 15 June 2020 under Section 22 & 24 of *the Act (Exhibit L # 8 & 9)* to terminate the tenancy on 21 June 2020. The landlord testified that the notices to terminate were served by

placing them on the tenant's rental unit door on 15 June 2020 (**Exhibit L # 8 & 9**). The landlord indicated that as of the hearing date (09 July 2020), the tenant remained in the unit. There is 1 adult living in the unit.

13. The landlord testified that there were a number of reasons for the issuance of the notice. First, the landlord testified that the tenant was exhibiting behaviors related to hoarding by having significant amounts of auto and bike parts around the property, tools everywhere and garbage left around the unit.
14. The landlord testified that on or about 04 June 2020 they had issues with the internet and they notified the tenant of this trouble. The landlord stated that within a couple hours the plumbing to the sink in their unit was blocked up solid. He stated that they attempted to clear with no success so he contacted a plumber who couldn't attend until 09 June 2020. The landlord stated that the cleanout for this line was located in the tenant apartment so he issued a notice to enter (**Exhibit L # 1**) on 08 June 2020 for entry on 09 June 2020.
15. The plumber attended and went to the cleanout in the tenant's apartment and could not get a snake through. He found a large piece of rag (**Exhibit L # 12 & 13**) in the cleanout. The landlord testified that the only entry into this line before the cleanout is the sink upstairs and it is impossible for this rag to get through the sink basket. The landlord submitted an invoice from the McCarthy's Heating Services Ltd (**Exhibit L # 3**) which indicates the following on the invoice:
 - a. *"CLEARED CLOGGED DRAIN – [REDACTED]: Opened the cleanout cap, removed a rag that was in the cleanout. The plumbing arrangement in the house has only the kitchen drain from upstairs on this one cleanout. Because of the size of the rag, this would not be able to pass through the basket strainer and cause this blockage. The only way the rag could get into the pipe and become lodged in the manner found is by being placed into the cleanout itself."*
16. The landlord testified that during the visit he served the tenant with a notice to repair the property (**Exhibit L # 4**) and specifically asked for the following:
 - a. Remove all Garbage
 - b. Remove all tools and motor parts
 - c. Remove all boxes, welders, garbage bags and oil products
 - d. OUTSIDE: Remove all bike parts, scrap lumber and gas cans
 - e. Put the apartment back to the original state of cleanliness
17. The landlord testified that he issued a Notice to Enter the Property (**Exhibit L # 5**) on 13 June 2020 to enter the property on 14 June 2020 for the purpose of an inspection. The landlord testified that he inspected the property on 14 June 2020 with [REDACTED] and found zero effort to rectify the repairs. The landlord submitted photos taken during this inspection (**Exhibit L # 6**) along with a witness statement from [REDACTED] (**Exhibit L # 7**).

18. The landlord stated that as a result of the lack of effort, the landlord issued two termination notices (**Exhibit L # 8 & 9**) on the tenant's entrance door on 15 June 2020 terminating the tenant on 21 June 2020.
19. The landlord further added that his wife suffers from asthma and with the increase in fumes and smells from the tenants unit, her asthma has been aggravated. The landlord submitted a medical certificate from his wife's doctor (**Exhibit L # 10**).
20. Lastly, the landlord made the statement that they are worried about a fire as the tenant leaves the bathroom fan on 24/7, does not clean the dryer lint regularly and the oil and gas products around.
21. The landlord is seeking vacant possession of the property (1 Adult).

Tenant Position

22. The tenant testified that the picture the landlord presented does reflect the condition of his rental unit on 13 June 2020. The tenant added that he has since taken steps to clean the property up.
23. The tenant stated that his tools are his therapeutic outlet. He testified that he is relaxed when using his tools. The tenant did not provide any verification of his condition.
24. The tenant testified that he did not put a rag into the cleanout pipe. He further indicated that he had a recording of the plumbers saying that this happened before. The recording was not submitted to the board or the other party.

Analysis

25. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 22 & 24 and 34 as well as the service requirements identified in section 35.
26. Section 24 requires that where tenant contravenes statutory condition 7(a) as set out in subsection 10(1), the landlord may 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.
27. Section 22 requires that where tenant contravenes statutory condition 2 as set out in subsection 10(1), the landlord can give the tenant notice requiring the tenant to comply with the condition. Within three days of issuing the notice to comply or within a reasonable time, the landlord may 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.

28. The issue then for this tribunal is to determine if the tenant in this matter either breached statutory condition 7(a) or 2 of section 10(1) of the *Residential Tenancies Act, 2018* which reads:

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

2. Obligation of the Tenant - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

7. Peaceful Enjoyment and Reasonable Privacy -

(a) The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.

29. On examination of the termination notices issued and submitted into evidence (**Exhibit L # 8 & 9**), I find the notices were served on 15 June 2020 with a termination date of 21 June 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 technical compliance with the requirements of section 22 (3) and 24 (2) which identify the technical requirements of the termination notice. On examination of the termination notice, I find that all these criteria have been met.

30. The section 24 notice (**Exhibit L # 8**) that has been issued requires that the applicant show on the balance of probabilities that there was just cause for the issuance of this short notice. The landlord has stated that it is his opinion that the tenant intentionally clogged the plumbing line from the landlord's unit in the property interfering with the peaceful use of the landlord's property. The landlord and the plumbing company have indicated that the only entry to the plumbing line in question other than the landlord's kitchen sink, was the cleanout in the tenant's apartment. This in conjunction with the timing of the internet outage and the location of the rag in the pipe, I find that the only reasonable and logical explanation is that the tenant lost his temper when the internet was lost and intentionally placed the rag into the drain line in an attempt to get back at the landlord. This sort of behavior is not only disturbing but dangerous to the plumbing infrastructure in the building. I find that the tenant is responsible for the drain clogging and in doing so has interfered with the peaceful enjoyment of the landlord's use of his property. I find that the landlord's termination notice issued under section 24 to be valid.

31. Further to the issue of the lack of repairs completed by the tenant. The landlord has followed the process outlined in the *Residential Tenancies Act* requiring a tenant to rectify a breach of statutory condition 2 set out in subsection 10(1) of the *Act*. The landlord has completed a valid inspection, outlined the deficiencies and provided the required time to rectify the breach. The tenant has failed to make any effort to clean up the property as is evident by the evidence photos. I further find that this callous behavior and lack of respect for the landlord's property as exhibited by the tenant completely unnecessary. I find that the landlord's notice under section 22 is valid.
32. As such, the landlords notice under section 22 of the *Residential Tenancies Act, 2018* is hereby determined to be valid and effective in law.

section 24 (2) and 22 (3)

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.*

33. According to the reasons identified above, I find that the termination notices issued by the landlord under section 22 and 24 to be valid and effective in law. 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

34. 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 2: Hearing Expenses

Landlord Position

35. 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 # 11**). The landlord paid a fee to Canada Post (**Exhibit L # 12**) for the service of documents in the amount of \$12.44. The landlord paid a fee for a Flash Drive of Pictures (**Exhibit L # 13**) in the amount of \$23.00. The landlord is seeking these costs.

Analysis

36. 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 been successful, I find the tenant shall be responsible to cover these reasonable expenses.

Decision

37. The tenant shall pay the reasonable expenses of the landlord in the amount of \$55.44.

Summary of Decision

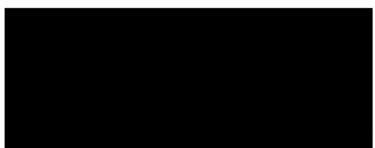
38. The landlord is entitled to the following:

- a) Hearing Expenses \$55.44
- b) **Total owing to Landlord** **\$55.44**

- c) Vacant Possession of the Rented Premises.
- d) 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.

17 July 2020

Date


Michael Greene
Residential Tenancies Tribunal