

Residential Tenancies Tribunal

Decision 20-0065-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:15 am on 25 February 2020 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants", did not participate.

Issues before the Tribunal

3. The landlord is seeking the an order for vacant possession of the rented premises.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 8 and 19 of the *Residential Tenancies Act, 2018* and rule 29 of the Rules of the Supreme Court, 1986.

Preliminary Matters

6. The tenants were not present or represented at the hearing and I was unable to reach them by telephone from the hearing room. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a)

respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served. The landlord submitted affidavits with her application stating that the tenants had been personally served with notice of the hearing on 08 February 2020 and they have had 16 days to provide a response. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issue 1: Vacant Possession of the Rented Premises

Relevant Submissions

7. The landlord entered into a rental agreement with [REDACTED] in 2011. About 2 years ago, [REDACTED] and [REDACTED] moved in with [REDACTED].
8. In December 2019, there were several disturbances at the unit and the landlord evicted [REDACTED] and [REDACTED]. They vacated on 06 January 2020.
9. [REDACTED] then asked the landlord if the tenants could move into the unit on 01 February 2020 with him. The landlord agreed.
10. However, there were further complaints of disturbances at the unit and landlord evicted [REDACTED] as well. He was supposed to vacate on 17 January 2020 but he did not have his possessions removed until 27 January 2020.
11. Without her knowledge or consent, the landlord discovered that the tenants had moved into the unit sometime in early January 2020. The owner of her company, [REDACTED], went to the unit on 16 January 2020 and the tenants paid him \$250.00 in rent for the period from 16 January 2020 to 31 January 2020. The tenants then asked if the landlord would consider renting to them and she stated that a decision would be made on 01 February 2020.
12. The landlord stated that the tenants continued to reside at the unit after 31 January 2020 but they have refused to pay her any more rent.
13. Because the landlord had not received any rent after 31 January 2020, she elected to terminate the tenancy. Although no rental agreement had been drafted, and although there was no discussion on the term of the tenancy, whether it was to run weekly, monthly or for a fixed term, the landlord reasoned that it could be deemed a weekly tenancy based on the fact that she had received \$250.00 for the period from 16 January to 31 January 2020, a period that was less than a month.
14. Accordingly, on 04 February 2020, she had one of her workers post a termination notice to the door of the rental unit. A copy of that notice was submitted with her

application ([REDACTED] #1). That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 08 February 2020.

15. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

16. Section 19 of the *Residential Tenancies Act, 2018* states:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

(a) where the residential premises is rented from week to week and the amount of rent payable by a tenant is overdue for 3 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 3 days after the notice is served on the tenant; and

(b) where the residential premises is

(i) rented from month to month,

(ii) rented for a fixed term, or

(iii) a site for a mobile home, and

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

(3) Subsection (2) does not apply where notice is given to a tenant under paragraph (1)(a) or (b) more than twice in a 12 month period.

(4) 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.

17. I find that the termination notice issued to the tenants is not a valid notice. Firstly, I was not persuaded that this tenancy was running on a week-to-week basis and in that respect, the notice was not issued under the correct section of the Act. Secondly, even if this tenancy was for a weekly term, the notice was issued 1 day too early. Let me explain.

18. With respect to the term of the tenancy, the landlord stated that although no lease was drafted, she had informed the tenants that the monthly rent was set at \$1100.00. She also claimed that although there was no discussion about the term of the agreement, whether it was weekly, monthly, or for a fixed-term, she stated that the tenants were aware that the unit was being rented on a monthly basis as that was the agreement she had had with [REDACTED]. Based on that testimony, I conclude that there was an implied agreement that this tenancy was running on a month-to-month basis.

19. I'll also point out that just because the tenants had paid \$250.00 in rent for a period totalling 15 days, a period less than a month, it does not follow that we can therefore infer that there was an implied agreement that the tenancy was running on a week-to-week basis.

20. Section 8 of the *Residential Tenancies Act, 2018* states:

Types of rental agreement

8. (1) A landlord may enter into a rental agreement where a residential premises is rented

(a) *from week to week;*

(b) *from month to month; or*

(c) *for a fixed term of not less than 6 months.*

(2) Where a residential premises is rented for a period that is

(a) *less than one week, the residential premises shall be considered to be rented from week to week;*

(b) *more than one week and less than 6 months, the residential premises shall be considered to be rented from month to month; and*

(c) *more than 12 months, the residential premises shall be considered to be rented for a fixed term of 12 months.*

21. As there was an agreement that the tenants would rent the unit from 16 January to 31 January 2020, a period of 15 days, a period that is “more than one week and less than 6 months”, then according to s. 8.(2)(b) these premises are to be considered to be rented from month-to-month.
22. As the tenancy was running on a monthly basis, the earliest the landlord could have issued the tenants a termination notice would have been 5 days after rent was due and the earliest termination date that could be specified in that notice would have to be 10 clear days after the notice was issued. The termination notice issued to the tenants does not meet those timeframe requirements and is therefore invalid.
23. But even if I am wrong about this, even if this agreement was running on a weekly basis, the termination notice would still be invalid.
24. Where premises are rented week-to-week, a termination notice can only be issued where the rent is overdue for 3 days. Where rent is due on the first of the month, tenants have all of that day to pay that rent and would only fall into arrears when that day ends, the 2nd day of the month. The rent would then be 3 days overdue at the end of 4th day of the month. It is only when that 4th day is over that a landlord can issue a termination notice under section 19.(1)(a). That is, the termination notice can only be served on the 5th day of the month, not the 4th.
25. So even if this was a weekly tenancy, as the notice submitted by the landlord was served on 04 February 2020, it is invalid as it was issued 1 day too early.

Decision

26. The termination notice issued to the tenants on 04 February 2020 is invalid.
27. The landlord’s claim for an order for vacant possession of the rented premises does not succeed.

05 March 2020

Date

John R. Cook
Residential Tenancies Tribunal