

Residential Tenancies Tribunal

[REDACTED] Decision 20-0125-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:00 am on 27 April 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 fixed term rental agreement with rent set at \$800.00 per month and due on the 1st of each month. There was a security deposit in the amount of \$600.00 collected on the tenancy on or about 01 October 2019. The landlord issued a termination notice dated 30 January 2020 for the intended termination date of 05 February 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 **16 April 2020** by serving the application for dispute resolution document personally to the tenant at the rental unit address.

The tenant has had **10 days** to provide a response.

A phone call was placed to the tenant's phone number [REDACTED]. The message on the message manager was for another individual and no message was left.

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.

7. The landlord called the following witnesses:
 - a. [REDACTED] ([REDACTED]) - *Affirmed*

Issues before the Tribunal

8. The landlord is seeking the following:
 - a) Vacant possession of the rented premises (Sec 24)
 - b) Hearing expenses

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
10. 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

11. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
12. The landlord testified that they are looking to have their property returned as per Section 24 the *Residential Tenancies Act, 2018*.
13. The landlord testified that the rental agreement is a fixed term tenancy (**Exhibit L # 2**). The landlord further testified that a notice to terminate was issued on 30 January 2020 under Section 24 of *the Act* (**Exhibit L # 1**) to terminate the tenancy on 05 February 2020. The landlord testified that the notice to terminate was served personally by courier service to the tenant on 30 January 2020. The landlord indicated that as of the hearing date (27 April 2020), the tenant remained in the unit. There is 1 adult living in the unit.
14. The landlord testified that the tenant has been smoking in the unit, creating noise at all hours in the day and night and using the property as an apparent drug house.
15. The landlord called a witness [REDACTED] who is an adjacent neighbor of the tenant to corroborate the events at the property.
16. The witness testified that he has been living at [REDACTED] [REDACTED] since August 2019. He testified that he lives immediately above the tenant and has been experiencing 2nd hand smoke coming from the tenant's property since the day he moved into the unit. The witness confirmed that he has personally seen the smoke coming from the tenant's unit and did not experience this prior to the tenant moving into the unit.
17. The witness further testified that he has experienced unreasonable noise from the tenant's unit at all hours of the night and day. He testified that there is constant arguing and fighting over drugs, there is loud music and as a result he is unable to work from home (COVID Requirement) as the noise from the tenant's unit can be heard by clients.

18. Additionally, █ testified that there has been a constant stream of people coming and going from the unit for drugs. He added that people have mistakenly come into his unit looking for the drugs. He stated that he is now uneasy at night and fears for his safety.
19. The witness █ has testified that there has been constant violations of the Public Health Order and he has complained to the Royal Newfoundland Constabulary concerning this. The witness stated that this entire situation has impacted his mental health and has added to his personal stress levels of life.
20. The landlord submitted into evidence photos of the property (**Exhibit L # 3**) taken during an inspection in January 2020. The landlord stated that these photos demonstrate that there was smoking going on in the property as is evident by the cigarette butts left around the property. Further, the landlord testified that the number of syringes around the apartment as depicted in the photos also support the witness's statements of drug use in the property.
21. The landlord stated that it is clear that the tenant has interfered with the peaceful enjoyment of the adjacent tenants and in turn, the landlord. The landlord is seeking vacant possession of the property.

Analysis

22. 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.
23. Section 24 requires that when a premises is rented for a fixed term, 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 30 January 2020 with a termination date of 05 February 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 24.
24. 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.
25. 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 given all the evidence there is required to determine if the validity of the notice has been supported. The landlord witness █, has

communicated multiple scenarios that would readily support the notion of interference with the peaceful enjoyment of a property. Every person has the right of peaceful enjoyment and reasonable privacy and one tenant shall not infringe upon the others rights in this regard. It is clear that the tenant in this matter does not hold any regard for the rights of the adjacent tenants in the property and seems to do what he wants, when he wants, without care or regard for others. The photos presented by the landlord supports the scenarios presented by the witness and I accept the evidence of the witness and find his testimony to be credible. I find that the tenant has interfered with the peaceful enjoyment and reasonable privacy of the adjacent tenants and the landlord.

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.*

26. As identified above, the landlord testified that the termination notice was served personally which is a permitted method of service identified under Section 35.
27. According to the reasons identified above, I find that the termination notice issued by the landlord to be valid and effective in law. Therefore, the landlord's claim for vacant possession is successful.

Decision

28. The landlord's claim for vacant possession succeeds. The landlords are further awarded costs associated with the enforcement of the Possession Order by the High Sheriff of NL.

Issue 3: Hearing Expenses

Landlord Position

29. 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 # 4**). The landlord is seeking this cost.

Analysis

30. 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 is responsible to cover these reasonable expenses.

Decision

31. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

32. The landlord is entitled to the following:

- a. An order of Vacant Possession
- b. Costs associated with the enforcement of the Possession Order by the High Sheriff of NL.
- c. An Order for Hearing Expenses in the amount of \$20.00

28 April 2020

Date

Michael Greene
Residential Tenancies Tribunal