

Residential Tenancies Tribunal

[REDACTED] Decision 20-0262-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 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 tenant, participated in the hearing – **Affirmed**. The tenant was represented by [REDACTED] – **Affirmed**.
3. The respondent, [REDACTED], hereafter referred to as the landlord, participated in the hearing. The landlord was represented by [REDACTED] – **Affirmed**.
4. The details of the claim were presented as a written monthly rental agreement with rent set at \$750.00 per month and due on the 1st of each month. There was a security deposit in the amount of \$572.50 collected on the tenancy on or about 18 May 2018. The landlord issued a termination notice dated 17 April 2020 for the intended termination date of 23 April 2020 under Section 23 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 tenant shows that the landlord was served with the notice of this hearing on the **06 July 2020** by serving the application for dispute resolution document electronically to the landlord at the email address: [REDACTED] with a copy of the sent email attached.

The landlord has had **14 days** to provide a response.

A phone call was placed to the landlord's phone number [REDACTED]. The landlord answered and indicated they would join the conference call immediately.

7. The landlord called no witnesses or presented no sworn statements to support their issuance of a short notice.
8. The tenant called no witnesses during the hearing.
9. The tenant did not claim any hearing expenses.

Issues before the Tribunal

10. The tenant is seeking the following:
 - a) Validity of Termination Notice
 - b) Hearing expenses

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
12. Also relevant and considered in this case are Sections 23, 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: Validity of a Termination Notice

Tenant Position

13. The tenant disputes the notice of termination issued by the landlord stating that he has not created any such disturbance and indicated that the tenant upstairs has indicated to him that they don't even know he is around. The tenant did not call any witnesses to this effect.

14. The tenants' representative added that the notice was issued during the pandemic and it was the opinion of the tenant that it should not have been issued then.

Landlord Position

15. The landlord testified that they have received many complaints in the form of phone calls and emails from the neighbors concerning the behavior of the tenant. The landlord described loud noises and garbage cans being kicked around.
16. The landlord testified that the upstairs tenant and the neighbors who were making the complaints to the landlord were not willing to participate in the hearing as a witness for the landlord.
17. 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

18. The validity of the termination notice is determined by its compliance with the notice requirements identified in Sections 23 and 34 as well as the service requirements identified in Section 35.
19. Section 23 requires that when a premises is rented for a monthly tenancy, the tenant can give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises on a specified date not less than 5 days but not more than 14 days after the notice has been served.
20. On examination of the termination notice issued by the landlord and submitted into evidence by the tenant (**Exhibit T # 1**), I find the notice was issued under the wrong section of the *Residential Tenancies Act, 2018*.
21. Additionally, the landlord failed to support any notion of interference with peaceful enjoyment by entering no corroborating evidence during the hearing.
22. On examination of the termination notice, I find that the notice was issued incorrectly with the wrong section identified, thereby rendering it invalid and of no effect in law.

Decision

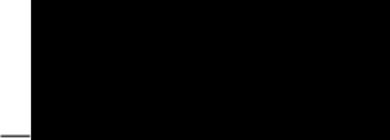
23. The Termination Notice issued by the landlord is determined invalid and of no effect in law.

Summary of Decision

24. The Termination Notice issued by the landlord is determined invalid and of no effect in law.

27 July 2020

Date



Michael Greene
Residential Tenancies Tribunal