

Residential Tenancies Tribunal

Decision 21-0005-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:45 am** on **18 March 2021** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and via Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as landlord, participated in the hearing. (*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 tenancy are a written monthly tenancy with rent set at \$570.00 per month excluding utilities and due on the first of each month. The landlord testified that the tenant was already an occupant of the building when he purchased the property in October 2016. There was no security deposit transferred with the purchase as the tenant and previous landlord agreed to dispose of the deposit for rent owing to the previous landlord.
5. In a proceeding under the *Residential Tenancies Act*, 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 **24 January 2021** by serving the original documents to the tenant personally at the rented premises.

The tenant has had **52 days** to provide a response.

There was no phone contact information on file for the tenant and therefore a call could not be placed prior to commencing the hearing.

7. As the tenant was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded in the tenant's absence.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a) Vacant possession of the rented premises;

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 19, 34 and 35 of *the Act*.

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 the tenant fell into arrears and currently owes **\$2120.00** as of 31 March 2021. The landlord supported this claim with rental records (**Exhibit L # 2**) but stated that he is not seeking compensation for the arrears at this time. The landlord testified that when the tenant fell in arrears, he issued a termination notice under Section 19 of the Act (**Exhibit L # 1**) to terminate the tenancy on 22 November 2020. The landlord testified that the notice was served personally and as of the hearing date (18 March 2021), the tenant remained in the unit. The landlord testified that there is 1 adult living in the unit.

Analysis

13. Established by undisputed statement of fact above, the rental agreement is a written monthly tenancy. The validity of the termination notice is determined by its compliance with the notice requirements identified in Sections 19. (1)(b), (4) and 34 as well as the service requirements identified in Section 35.
14. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.
15. Section 19. (1)(b) requires that rent be overdue for 5 days or more before the landlord may give the tenant a termination notice to vacate the property not less than 10 days after the notice is served on the tenant. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 1**), I find the notice was served 08 November 2020 with a termination date of 22 November 2020. As established above and undisputed by the tenant, rent had been in arrears since 01 October 2020. As rent had been in arrears for 30 plus days, I find this is well beyond the 5 day requirement set out in the Act. I further find that as the date of termination identified on the notice is 10 clear days between the date the notice was issued and the date the tenant is required to move out, the termination notice is in full compliance with the requirements of Section 19. (1)(b).

16. Sections 19. (4) and 34 below identify the technical requirements of the termination notice. On examination of the termination notice, I find it all these criteria have been met.

Section 19. (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.*

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.*

17. As identified above, the landlord testified that the termination notice was served personally which is a permitted method of service identified under Section 35.

18. According to the reasons identified above, I find that the termination notice issued by the landlord to be proper and valid. Therefore, the landlord is entitled to an order for vacant possession of the property along with an order for any charges incurred to certify the attached orders and all costs associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

Decision

19. The landlord's claim for vacant possession succeeds. The landlord is further awarded costs associated with the certification of the attached order and enforcement of the Possession Order by the High Sheriff of NL.

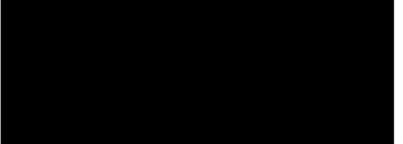
Summary of Decision

20. The landlord is entitled to the following:

- a) Vacant Possession of the Rented Premises
- b) Any incurred costs to certify the attached order
- c) Any incurred costs from the High Sheriff of NL associated with enforcement of the attached Possession Order

22 March 2021

Date


Michael Greene
Residential Tenancies Tribunal