

Residential Tenancies Tribunal

Decision 21-0008-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am on 17 May 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 and was represented by [REDACTED].
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 verbal monthly agreement with rent set at \$450.00 per month and due on the 1st of each month. There was no security deposit collected on this tenancy. The landlord issued the most recent termination notice on 04 March 2020 to terminate the tenancy on 30 June 2020 under section 18 of the *Residential Tenancies Act, 2018*.
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 application was AMENDED at the hearing to add rent that has come due since the filing of the application and any payments made by the tenant. The new amount outstanding is **\$10,500.00** up to and including 31 May 2021.

7. The landlord submitted written closing arguments and case review after the hearing which was permitted by the tribunal.
8. 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 March 2021** by serving the original documents to the tenant personally at the rented premises.

The tenant has had **54 days** to provide a response.

A phone call was placed to the tenant to the number on file [REDACTED]. There was no answer.

9. 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

10. The landlord is seeking the following:
 - a) Payment of rent owing **\$10,500.00**;
 - b) Compensation for Inconvenience **\$1998.00**;
 - c) Lost rent due to tenant over holding; **\$40,413.39**
 - d) Vacant possession of the rented premises;
 - e) 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:
 - a. Sections 19, 34 and 35 of *the Act*; and
 - b. Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Rent Owing - \$10,500.00

Relevant Submissions

Landlord Position

13. The landlord stated that they had entered into a verbal monthly rental agreement with the tenant. The agreed rent is set at \$450.00 per month and due on the 1st day of each month.
14. The landlord explained that this property was provided to [REDACTED] as part of the package to transition physicians into rural communities in Newfoundland and Labrador. He stated that [REDACTED] was afforded 3 free month's accommodations with an option to remain if accommodations could not be found.
15. The landlord stated that there were problems with rent going unpaid up to 2005 and at which time payroll deductions were set up and the problem was rectified. The landlord indicated that in 2018 the employer/employee relationship was terminated and payroll deductions were no longer available. They stated that rent once again became a problem.
16. The landlord advised that a termination notice was issued in July 2018 for October 2018 but the tenant failed to vacate and there was no communication. The landlord advised that the last payment of rent was received in August 2019 and a termination notice (**Exhibit L # 1**) was served on 04 March 2020 to vacate the property on 30 June 2020.
17. The landlord advised that there was an ongoing attempt to work with the tenant. He further indicated that there was some concern with the validity of the first termination notice issued in 2018.
18. The landlord further submitted a copy of the rent ledger (**Exhibit L # 2**) along with a copy of a letter sent to the tenant from the landlord's solicitor (**Exhibit L # 3**).

Analysis

19. I have reviewed the testimony and evidence of the landlord in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) is the rent that is being claimed by the landlord actually owed by the tenant.
20. With respect to the arrears being claimed, I agree with the landlord that rent is owed. Rent is required to be paid by the tenant for use and occupation of the rented premises as set out in the rental agreement established when the tenancy began. Records are clear that rent for the period ending 31 January 2021 has not been paid leaving a balance of **\$7650.00**.

21. Additionally, the landlord has amended the claim at the outset to add rent for the months of February, March and April 2021 at the rate of \$450.00 per month that has come due since the filing of the application. I further find that this rent totaling **\$1350.00** is also owed by the tenant.
22. Further, rent for May 2021 can only be calculated up to and including the day of the hearing (17 May 2021). That calculation is $(\$450.00 \times 12 \text{ months} = \$5400.00 \div 365 \text{ days} = \$14.79 \text{ per day} \times 17 \text{ days} = \$251.43)$. Rent for My 1 – 17, 2021 is **\$251.43**.
23. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$14.79** beginning on **18 May 2021** and continuing until the day the landlord obtain vacant possession of the rented premises.

Decision

24. The landlord's total claim for rent succeeds as follows:
 - a) Rent owing up to 31 January 2021 \$7650.00
 - b) Rent owing 01 Feb 2021 to 30 April 2021 1350.00
 - c) Rent owing for May 1 – 17, 2021 251.43
 - d) Total Arrears **\$9251.43**
 - e) **Total due to Landlord** **\$9251.43**
 - f) A daily rate beginning 18 May 2021 **\$14.79**

Issue 2: Other (Extra Rent Incurred) - \$40,413.39

Landlord Position

25. The landlord is seeking payment of extra rent incurred as a result of the tenant's failure to vacate the property as required in October 2018 – present day.
26. The landlord indicated that as a result of the tenant's failure to vacate the premises, the landlord was forced to provide rented accommodations to physicians for housing at significantly higher rates than the cost of rent charged at their corporation owned property. The landlord added that this service is provided out of convenience as opposed to any profit making venture by the corporation.
27. The landlord indicated that two rentals had to be engaged as follows:
 - a. Oct 2018 – June 2020 @ a rate of \$1900.00/month (\$38,747.59)
 - b. May 2020 – Present @ a rate of \$1600.00/month (\$9,315.80)
 - c. **Grand Total (\$48,063.39)**

- 28. The landlord further indicated that they are fully aware that any ordered recovery amount of arrears of the tenant would be deducted from this portion of the claim.
- 29. The landlord in this matter argues that the landlord has acted in accordance with their normal business operations and that the tenant has failed to act upon the terminations notices issued to him and as such has failed to vacate the property thereby causing the landlord to incur extra and unreasonable costs associated to extra rents. The landlord supports their arguments by insisting that mitigation, as identified in the Act, should not be applied in this instance and referenced two legal precedence cases:
 - a. *Dunkirk Colliery Co. v. Lever* (2)
 - i. *“the Person who has broken the contact is not to be exposed to additional cost by reason of the plaintiffs not doing what they ought to have done as reasonable men, and the plaintiffs not being under any obligation to do anything otherwise than in the ordinary course of business”*
 - b. *Red Deer College v. Michaels* (1975), 57 DLR (3d) 386
 - i. *It is of course, for a wronged plaintiff to prove his damages, and there is therefore a burden upon him to establish on a balance of probabilities what his loss is. The parameters of loss are governed by legal principle. The primary rule in breach of contract cases, that a wronged plaintiff is entitled to be put in as good a position as he would have been in if there had been proper performance by the defendant, is subject to the qualification that the defendant cannot be called upon to pay for avoidable losses which would result in an increase in the quantum of damages payable to the plaintiff. The reference in the case law to a “duty” to mitigate should be understood in this sense.*
- 30. The landlord indicates that since July 2019, the landlord has been engaged and kept attempting to recover the property from the tenant.

Analysis

- 31. The notion of the term ‘mitigation’ as discussed at the hearing is certainly one consideration that has to be addressed for this portion of the claim. The second notion is that of reasonableness. In considering the first case noted above, the first sentence jumps off the page *“.....the Person who has broken the contact is not to be exposed to additional cost by reason of the plaintiffs not doing what they ought to have done as reasonable men.....”*. The process is therefore important to discuss.
- 32.

33. The landlord is governed by the *Residential Tenancies Act, 2018* and therefore must adhere to all the conditions therein. The tribunal understands that the solicitor did not commence this proceeding from the outset, but was engaged later in the process once things started to go south. Given that this is a large corporation engaged in many leasing arrangements, I would expect that the leasing agents hired by the corporation to be fully aware of the process to terminate a tenancy and engage a removal process if necessary, just like any private landlord.
34. The Dunkirk case speaks of what reasonable men would have or ought to have done. The process to terminate and remove a tenant is in its simplest form (1) issue a termination notice, (2) file an Application for Dispute Resolution (3) present the necessary case (4) assuming a successful case, certify the Order arising and engage the Sheriff to recover the property. These steps are what any reasonable person is expected to do.
35. In looking at the time lines of this case, it commences in October 2018 when the employee was terminated and began to fall into arrears. This is the exact time that reasonable care should have started. Instead, for whatever reason, the leasing agents saw fit to work with the tenant and it is now apparent that the process was dragged on to present day where a solicitor was engaged to complete the task. This tribunal does not expect that a landlord take the absolute fastest method but would expect that almost three years is certainly not reasonable.
36. The tenant was legally terminated on 30 June 2020 and from this date was over holding the property. This action of the tenant is in and of itself a challenge to the validity of the termination notice and as such, the landlord is required to seek an order of possession and prove the validity of the notice in a timely fashion should they wish to gain possession of the unit. The landlord did not seek a possession order prior to the current application and thus there was no legal directive for the tenant to leave the unit. The tenant then was engaging in a proper performance of the contractual obligations. The tenant has a legal right to challenge the validity of a termination notice, whether directly or indirectly.
37. Based on the evidence and argument, I find that the landlord did not act within a reasonable time frame to commence the proceedings to recover the property. The time lapse and the additional monthly rent charges claim is not seen as reasonable and as such, the landlord's claim for extra incurred rent fails.

Decision

38. The landlord's claim for extra rent fails.

Issue 3: Vacant Possession of the Rented Premises

Landlord Position

39. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
40. The landlord testified that when the tenant fell in arrears, they issued a termination notice under Section 18 of the Act (**Exhibit L # 1**) to terminate the tenancy on 30 June 2020. The landlord testified that the notice was served personally and as of the hearing date (17 May 2021), the tenant remained in the unit. The landlord testified that there is 1 adult living in the unit.

Analysis

41. Established by undisputed statement of fact above, the rental agreement is a verbal 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.
42. Section 18. (2)(b) requires that the landlord may give the tenant a termination notice to vacate the property not less than 3 months before the end of the rental period where the residential premises is rented from month to month. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 1**), I find the notice was served on 04 March 2020 with a termination date of 30 June 2020. I find that as the date of termination identified on the notice is not less than 3 months before the end of the rental period and the date the tenant is required to move out, the termination notice is in full compliance with the requirements of Section 18. (2)(b).
43. Sections 18. (9) 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 18. (9)

In addition to the requirements under Section 34, a notice under this section shall

- (a) *be signed by the landlord;*
- (b) *be given not later than the first day of the rental period;*
- (c) *state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*
- (d) *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.*

44. As identified above, the landlord testified that the termination notice was served personally which is a permitted method of service identified under Section 35.
45. 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 and all costs associated with certifying the orders or with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

Decision

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

Issue 4: Compensation for Inconvenience - \$1998.50

Landlord Position

47. The landlord is seeking costs associated with the travel to the Bonavista area to complete a unit inspection on 26-28 February 2019 and to hand deliver a termination notice in March 2020.
48. The landlord indicated that their staff travelled to Bonavista from St. John's to complete an inspection on the property and the corporation incurred normal travel expenses such as (mileage, meals, accommodations, incidentals) in the amount of **\$1384.42**.
49. Further the landlord indicated that the corporation staff again travelled to Bonavista to hand deliver a notice of termination to the tenant and again incurred normal travel expenses such as (mileage, meals, accommodations, incidentals) in the amount of **\$905.80**.

Analysis

50. The landlord in the normal practice of the duties as a landlord whether that be for profit or not experiences operational costs that are a normal cost of doing business. Inspections of their units certainly falls within that category and is reasonably expected for the general upkeep of a property.
51. Additionally, the landlord will likely have to engage in various processes whereby documents will have to be served to the other party as a legal requirement. The legislation provides numerous methods of service for both an application and for any other type of notice required to be served. Each method will vary in costs.
52. The notion that the landlord in this case required someone to travel from St. John's to Bonavista to complete an inspection cannot be attributed to the tenant if it was the landlord that wanted the inspection or required the inspection.
53. Similarly, the notion of sending a person to hand deliver a notice of termination when a much simpler method (register mail) was available and then charge back the cost to the tenant is not reasonable.
54. As such, I find that this claim for compensation for inconvenience is unreasonable and therefore fails.

Decision

55. The landlord's claim for compensation for inconvenience fails.

Issue 5: Hearing Expenses

Landlord Position

56. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Digital Government Service NL (████████) (**Exhibit L # 5**). The landlord paid a fee for the service of claim documents by process server (**Exhibit L # 4**) in the amount of \$242.38. The landlord is seeking this cost.

Analysis

57. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlord are 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*. As such, I find the tenant is responsible to cover these reasonable expenses.

Decision

58. The tenant shall pay the reasonable expenses of the landlord in the amount of \$262.38.

Summary of Decision

59. The landlord is entitled to the following:

a)	Rent Owing (up to and including 17 May 2021)	\$9251.43
b)	Hearing Expenses	<u>262.38</u>
c)	Total Owing to the Landlord	\$9513.81
d)	Vacant Possession of the Rented Premises	
e)	A daily rate of rent set at \$14.79 beginning 18 May 2021 and continuing until the day the landlord obtains vacant possession of the Rented Premises.	
f)	Any incurred costs associated with certifying the attached orders	
g)	Any incurred costs from the High Sheriff of NL associated with enforcement of the attached Possession Order	

09 June 2021

Date

Michael Greene
Residential Tenancies Tribunal