

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0038-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 11:00 am on **23 February 2021** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via Bell Teleconferencing System.
2. The hearing was Re-called at 10:45 am on **01 April 2021** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via Bell Teleconferencing System.
3. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing. The landlord was represented by [REDACTED] – *Affirmed*.
4. The respondent, [REDACTED], hereafter referred to as the tenant, did not participate in the hearing – *Absent and Not Represented*.
5. The details of the claim were presented as a written monthly rental agreement with rent set at \$855.00 per month and due on the 1st of each month. There was a security deposit in the amount of \$423.75 collected on the tenancy on or about 16 December 2010. The landlord issued a termination notice dated 22 December 2020 for the intended termination date of 31 March 2021 under Section 18 of the *Residential Tenancies Act, 2018*.
6. 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

7. 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 **01 February 2021** by serving the original documents to the tenant personally at the rented premises.

The tenant has had **21 days** to provide a response.

There was no contact information on file for the tenant to make a last minute call regarding the hearing.

8. 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

9. The landlord is seeking the following:
 - a) Vacant possession of the rented premises
 - b) Hearing expenses

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
11. Also relevant and considered in this case are Sections 18, 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

12. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
13. The landlord testified that they are looking to have their property returned as per the *Residential Tenancies Act, 2018*.
14. The landlord testified that a notice to terminate was issued under Section 18 of *the Act* (**Exhibit L # 1**) to terminate the tenancy on 31 March 2021. The landlord testified that the notice to terminate was served personally to the tenant at the rented premises. The landlord indicated that as of the hearing date (23 February 2021), the tenant and/or an occupant remained in the unit. The landlord further testified that to the best of her knowledge, there is 1 adult living in the unit.
15. As of the second sitting of the claim on 01 April 2021, the tenant had not vacated the unit.

Analysis

16. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 18 (9) and 34 as well as the service requirements identified in section 35.
17. Section 18 (2)(b) requires that when a premises is rented for month to month, the landlord may terminate the tenancy and the tenant is required to vacate the residential premises on a date not less than 3 months before the end of the rental period. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 1**), I find the notice was served on 22 December 2020 with a termination date of 31 March 2021. I find that as the date of termination identified on the notice is at least 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). Sections 19 (4) and 34 identify the technical requirements of the termination notice as identified below. On examination of the termination notice, I find it all these criteria have been met.

18. As identified above, the landlord testified that the termination notice was served personally at the rented premises which is a permitted method of service identified under section 35.

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 a 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.*

19. 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 incurred costs to certify the order and all costs associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

Decision

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

Summary of Decision

21. The landlord is entitled to the following:

- a) **Vacant Possession of the Rented Premises**
- b) **An order for any and all costs charged to certify the order or associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.**

07 April 2021

Date


Michael Greene
Residential Tenancies Tribunal