

Residential Tenancies Tribunal

Decision 19-0093-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 11:00 am on 21 February 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and via teleconference to the Residential Tenancies Office in Mt Pearl.
2. The landlord, [REDACTED], hereafter referred to as landlord, participated in the hearing. The landlord was represented by, [REDACTED].
3. The tenant, [REDACTED], hereafter referred to as tenant, participated in the hearing.
4. The details of the claim were presented as a written monthly rental agreement with rent set at \$1800.00 per month and due on the 1st of each month. There was no security deposit taken on the tenancy. The landlord indicated that a termination notice was issued to the tenant on February 4, 2019 for the intended termination date of February 10, 2019 under Section 24 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 update the tenant's name to be, [REDACTED].

7. The tenant did not call any witnesses.
8. The landlord called the following witnesses at the hearing:
 - a. [REDACTED] (Tenant) – Sworn
 - b. [REDACTED] (Tenant) – Sworn
 - c. [REDACTED] (Tenant) - Sworn
 - d. [REDACTED] (Tenant) – Sworn
 - e. [REDACTED] (Tenant) – Sworn
 - f. [REDACTED] (Tenant) – Sworn
 - g. [REDACTED] (Tenant) – Sworn
 - h. [REDACTED] (Maintenance Personnel) – Sworn

Issues before the Tribunal

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

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 24, 34 and 35 of *the Act*.

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 trouble with the tenant started almost immediately when the tenant moved into the rented premises. The landlord testified that she has had complaints that the respondent has been heard saying in the corridors of the building that he wished the tenants would all die and go to hell, that the respondent has blocked passage of other tenants as intimidation tactics, and has caused or been party to excessive noise at all hours of the night and well beyond reasonable hours.

14. The landlord stated that the building is a 55 plus seniors building and the tenants other than the respondent in this matter respect each other and the rules of the property.
15. The landlord stated that there have been numerous complaints from the tenants that the respondent in this matter has and continues to smoke in his premises and the smell is interfering with their peaceful enjoyment.
16. The landlord stated that she had heard enough complaints and issued a termination notice to the respondent (Exhibit L # 1) which was served personally.
17. A common theme across all the witnesses called at the hearing was that they were fearful that the respondent would cause a fire in the property with his smoking. Additionally, the witnesses also felt intimidated by the respondent and did not feel safe in the building any longer.
18. Witnesses were consistent in their descriptions of excessive noise and loud banging of doors at all hours of the evening, night and early morning hours. Witness **JW** recounted an argument that he witnessed with the respondent and his support worker over lost medications. The witness was distraught over the behavior and language.
19. Witness **MC** and **GC** are the caretakers in the building who personally monitor the hallways on a regular basis. Both witnesses described the smell of smoke in the building. **GC** testified that he has COPD and since the arrival of the respondent it has been difficult for **GC** to breathe in the corridors. **MC** stated she is fully aware that the respondent has to be smoking in the building because she is the only other tenant who smokes and she can't smoke inside given the medical condition of **GC**. Additionally, the banging of the doors by the respondent and his guests at the late hours is unacceptable and has to stop.
20. Witness **DD**, being the maintenance person in the property, has been working in this building since it has been built (4.5 years). The witness stated that he has only received complaints since the respondent has moved into the building. Witness **DD** stated that he has smelled smoke coming from the respondent's unit. **DD** testified he witnessed respondent's guest entering the building using the respondent's entry code. **DD** stated that providing the entry code was in violation of the building policies. The witness stated that he sees the constant fear of the other residents ever since the respondent has moved into the building.

Tenant Position

21. The respondent disputes the position of the landlord and the respective witnesses. The respondent stated that he is [REDACTED] in a motorized wheelchair trying to get through 36 inch doorways. He stated that he has limited control of the doors and that as he moves through them they will close behind him and may create some noise. He stated as well that he does not control the

comings and goings of his guests regarding the doors closing. He stated that he does not smoke in the building and states he is currently on the patch to quit smoking.

Analysis

22. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 24 (1), 10(1) 7(a) and 34 as well as the service requirements identified in section 35.
23. The issue of interference of peaceful enjoyment and reasonable privacy of the landlord and/or adjacent tenants has been outlined and established by the testimony of the landlord, and the landlord witnesses in paragraphs 13 - 20 above. The information from all witnesses is consistent respective of smelling smoke in the building and the constant and continual noise for banging doors as a result of the respondent and his guests. The evidence is corroborated by the maintenance person (DD) and I find the witness testimony to be credible. I accept the evidence of the landlord and note that a continual pattern of noise between the respondent and guests coming and going at all hours is not an accepted behavior when other tenants are living in the same dwelling building. The social norm is to respect the privacy and peaceful enjoyment of others and not subject other tenants to a sense of insecurity and intimidating actions. I find that the respondent has interfered with both the peaceful enjoyment and reasonable privacy of the landlord and the adjacent tenants far beyond the socially accepted norms.
24. Section 24 (2) requires that when a tenant contravenes statutory condition 7(a) as set out in section 10(1) of The Act, the landlord may terminate the tenancy 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 February 4, 2019 with a termination date of February 10, 2019. As established in paragraph 23, the respondent is in contravention of statutory condition 7(a) of *The Act*. I further find that as the date of termination identified on the notice is at least 5 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 24 (2). Sections 24 (2) 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.

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.*

25. As identified in paragraph 16, the landlord testified that she served the termination notice personally which is a permitted method of service identified under section 35.
26. 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 the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

Decision

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

Summary of Decision

28. The landlord is entitled to the following:

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

February 22, 2019

Date


Michael Greene
Residential Tenancies Tribunal