

Residential Tenancies Tribunal

Decision 19-0098-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 11:21 am on 27 February 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The respondent, [REDACTED], hereafter referred to as the tenant, participated in the hearing.
4. The details of the claim were presented as a written fixed term rental agreement with rent set at \$1300.00 per month and due on the 1st of each month. It was stated that a security deposit in the amount of \$650.00 was collected on or about October 27, 2018 and the landlord and tenant signed a discontinuance agreement on or about January 4, 2019 to discontinue the agreement on February 15, 2019 under Section 18(5) 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 tenant advised of a new mailing address which was noted and the electronic system at Residential Tenancies was updated accordingly to reflect the new address.
7. The file was amended to add rent beyond February 15, 2019 as the property was not vacated.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a) Payment of rent owing **\$1300.00**;
 - b) Vacant Possession of the Property.

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 18, 34 and 35 of *the Act*.

Issue 1: Rent Owing - \$1300.00

Relevant Submissions

Landlord Position

11. The landlord stated that he had entered into a written fixed term rental agreement with the tenant, commencing November 1, 2018. The agreed rent was set at \$1300.00 per month and due on the 1st day of each month with a security deposit in the amount of \$650.00 collected on this tenancy. The landlord and tenant entered into a discontinuance agreement on January 4, 2019 to discontinue the agreement on February 15, 2019 (Exhibit L # 2). The landlord stated that rent for February 2019 was not paid with the balance outstanding being \$1300.00 up to and including 28 February 2019. The landlord stated as of the hearing date 27 February 2019 rent remains outstanding.

Tenant Position

12. The tenant acknowledges the rental arrears and testified that the discontinuance agreement was entered into with the landlord and not done under duress or coercion. The tenant has indicated that she has not paid the rent for February 2019.

Analysis

13. I have reviewed the testimony and evidence of the landlord and tenant in this matter. As far as I can see, there is one issue here that needs to be addressed: (i) is the rent that is being claimed by the landlord actually owed by the tenant.
14. With respect to the arrears being claimed, I agree with the landlord that rent was not paid as required and 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. The tenant has accepted responsibility and acknowledged the arrears. The claim originally sought rent up to February 15, 2019 however, the property is being over held and was not vacated, and therefore rent is still due and payable. Rent can only be awarded up to and including the hearing date and is calculated as $(\$1300.00 \times 12 \text{ months}) = \$15,600.00 \div 365 \text{ days} = \$42.74 \text{ per day} \times 27 \text{ days} = \1153.98 . Rent for February 1 – 27, 2019 then is **\$1153.98**.
15. Respective of the rent beyond the hearing date of February 27, 2019, the landlord is further awarded a daily rate of rent in the amount of \$42.74 commencing on February 28, 2019 and continuing until the day the landlord obtains vacant possession of the property.

Decision

16. The landlord's total claim for rent succeeds as follows:
 - a) Rent owing up to February 28, 2019 **\$1153.98**
 - b) Total Arrears **\$1153.98**
 - c) The landlord is awarded a daily rate of rent in the amount of \$42.74 beginning on February 28, 2019 and continuing until the day the landlord obtains vacant possession of the property.

Issue 2: Vacant Possession of the Rented Premises

Landlord Position

17. The landlord is seeking to recover possession of the rented premises located at [REDACTED].

18. The landlord testified that both parties entered into a discontinuance agreement (Exhibit L # 2) respective of the fixed term written rental agreement entered into between both parties. The landlord stated that the agreement was discontinued on February 15, 2019 and further added that as of the hearing date (February 27, 2019, the unit remains occupied by the occupants listed in the rental agreement. The landlord testified that the agreement to discontinue was signed by both parties on January 4, 2019 and served on the same day to the tenant and a courteous copy to all occupants personally. The landlord is seeking vacant possession of the unit based on the discontinuance agreement. The landlord further testified that to the best of his knowledge, there are 3 adults and 1 minor child living in the unit.
19. The tenant was in full agreement with the discontinuance of the tenancy and understood what the landlord was asking for in this hearing.

Analysis

20. A rental agreement between a landlord and tenant can be terminated by either party issuing a valid termination notice to the other party or by both parties entering into a written agreement to terminate the rental agreement on a specific date. In this claim, both parties entered into a written agreement to terminate (discontinue) the rental agreement on February 15, 2019. The validity of the discontinuance agreement is determined by its compliance with the notice requirements identified in sections 18(5) and 34 as well as the service requirements identified in section 35.
21. Section 18 (5) clearly indicates that a termination notice is not required where a landlord and tenant both agree in writing to terminate a tenancy on a specified date. In essence, the written instrument being used by the two parties is acting as the termination notice. There is no apparent indication of any sort of coercion as it relates to the discontinuance agreement. It is apparent that both parties were clear as to what they were entering into and did so on their own and with no apparent outside influences. The agreement requires that the property be vacated on or before February 15, 2019 including all personal belongings. On examination of the agreement entered into and submitted into evidence (Exhibit L # 2), I find the discontinuance agreement serves to terminate the tenancy on or about February 15, 2019 as the specified termination date. Failure for the tenant or persons permitted into the property by the tenant to adhere to the discontinuance agreement is in contravention of section 18(5) of *The Act*. Further, I find that the discontinuance agreement is in full compliance with the *ACT*. Given that a formal termination notice is not required, the service requirements are limited to the specified termination date which in this case was February 15, 2019 and was provided to all parties 42 days before the termination date.

22. As identified in paragraph 18, the landlord testified that he served the discontinuance agreement personally which is a permitted method of service identified under section 35.
23. According to the reasons identified above, I find that the discontinuance agreement entered into by the landlord and tenant 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

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

24. The landlord is entitled to the following:
 - a) Rent Owing (up to and including Feb 27, 2019).....\$1153.98
 - b) **Total owing to Landlord****\$1153.98**
 - c) **An Order of Vacant Possession**
 - d) **A daily rate of rent in the amount of \$42.74 beginning February 28, 2019.**
 - e) **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.**

February 27, 2019

Date

Michael Greene
Residential Tenancies Tribunal