

Residential Tenancies Tribunal

[REDACTED] Decision 19-0026-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 1:30 pm on 29 April 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. The landlord was represented by [REDACTED] [REDACTED] (affirmed).
3. The respondent, [REDACTED], hereafter referred to as the tenant, did not participate in the hearing.
4. The details of the claim were presented as a written monthly rental agreement with rent set at \$565.00 per month and due on the 1st of each month. There was a security deposit collected in the amount of \$200.00 on the tenancy on 01 Sept 2008. The landlord issued a termination notice dated 19 December 2018 for the intended termination date of 31 March 2019 under Section 17(1)(b) of the *Residential Tenancies Act, 2000*. The application for dispute resolution was filed by the landlord on 03 April 2019.
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, [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 **05 April 2019** by serving the documents to the tenant personally at the rental address. The tenant has had **23 days** to provide a response.

Phone contact was attempted to the tenant prior to the hearing with the following results:

[REDACTED] ***Phone Disconnected***

As the tenant was properly served in accordance with the *Residential Tenancies Act, 2018*, with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded with the hearing in the tenant's absence.

Issues before the Tribunal

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

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
9. Also relevant and considered in this case are Sections 17, 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

10. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
11. The landlord testified that a notice to terminate was issued under Section 17(1)(b) of *the Act, 2000* (Exhibit L # 2) to terminate the tenancy on March 31, 2019. The landlord testified that the notice to terminate was served personally by the landlord to the tenant on 19 December 2018. The landlord indicated that as of the hearing date (29 April 2019), the tenant remained in the unit. The landlord further testified that to the best of her knowledge, there is 1 adult living in the unit.

Analysis

12. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 17(1)(b), 18(2) and 34 as well as the service requirements identified in section 35.
13. The landlord in this instance has issued a termination notice under section 17(1)(b) of the *Residential Tenancies Act, 2000* and did not file an application until 5 April 2019. At the time of application, the *Residential Tenancies Act, 2000* was repealed and has no effect in law. The new legislation, the *Residential Tenancies Act, 2018* would apply to this application filed on 05 April 2019.
14. Section 17 of the *Residential Tenancies Act, 2018* deals with the tenant's records of payments and is not a section for which a termination notice would be issued. It is evident that the landlord has quoted a section of the repealed legislation and the termination notice (Exhibit L # 2) and failed to file a claim prior to the legislation being repealed.
15. Section 18 (2)(b) is the appropriate section to terminate a tenancy for no cause and 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 where the residential premises is rented month to month. On examination of the termination notice issued and submitted into evidence (Exhibit L # 2), I find the notice was served on 19 December 2018 with a termination date of 31 March 2019. I further find that the adjudication of this claim has to be considered under the legislation in effect on the date the application was filed (April 5, 2019) which is the *Residential Tenancies Act, 2018*. Under this *Act*, the notice requirements are not met as the termination notice does not identify the correct section of the legislation for which the tenancy is being terminated. As such, I find that the termination notice is not in compliance with the requirements of section 18 (2)

and 34.

16. Sections 18 (2) and 34 identify the technical requirements of the termination notice as identified below. On examination of the termination notice, I find that all these criteria have not been met.

section 18 (2)(b)

A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises

(b) not less than 3 months before the end of the rental period where the residential premises is rented month to month; and

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. According to the reasons identified above, I find that the termination notice issued by the landlord to not be proper and not valid. Therefore, the landlord's request for an order of vacant possession of the property fails.

Decision

18. The landlord's claim for vacant possession fails.

Issue 2: Hearing Expenses

Landlord Position

19. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL [REDACTED] (Exhibit L # 3). The landlord is seeking this cost.

Analysis

20. 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*. The landlord's claim however, has not been successful and as such, I find the landlord shall cover their own hearing expenses.

Decision

21. The landlord's claim for hearing expenses fails.

Summary of Decision

22. The landlord's claim for vacant possession and hearing expenses fails.

6 May 2019

Date


Michael Greene
Residential Tenancies Tribunal