

## Residential Tenancies Tribunal

[REDACTED] Decision 19-0078-01

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at 1:30 pm on 28 Nov 2019 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 applicant, [REDACTED], hereafter referred to as tenant1, participated in the hearing. (Affirmed).
3. The applicant, [REDACTED], hereafter referred to as tenant2, did not participate in the hearing.
4. The respondent, [REDACTED], hereafter referred to as the landlord1, did not participate in the hearing and was represented by [REDACTED] (Affirmed), hereafter referred to as the landlord.
5. The respondent, [REDACTED], hereafter referred to as the landlord2, did not participate in the hearing and was represented by [REDACTED] (Affirmed), hereafter referred to as the landlord.
6. The details of the claim were presented as a written monthly rental agreement with rent set at \$675.00 per month and due on the 1<sup>st</sup> of each month. It was stated that a security deposit in the amount of \$300.00 was collected on or about 02 April 2019.
7. The landlord issued a termination notice dated 01 Oct 2019 for the intended termination date of 01 January 2020 under Section 18 of the *Residential Tenancies Act, 2018*.
8. The landlord issued a subsequent termination notice dated 25 November 2019 for the intended termination date of 30 November 2019 under Section 20 of the *Residential Tenancies Act, 2018*.

9. 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

10. From the documents submitted into evidence, and a review of the Registry of Companies, it is clear that the landlord should have been named as [REDACTED] [REDACTED]. Records indicate that the named landlords [REDACTED] [REDACTED] are named directors of the actual company. Section 2 of the *Residential Tenancies Act, 2018* defines a landlord as

2 (c) *landlord includes*

(i) *an owner of a residential premises,*

(ii) ***an agent or another person who, on behalf of an owner,***

*(A) permits the use or occupation of a residential premises under a rental agreement,*  
*(B) exercises powers and performs duties under this Act or the rental agreement,*

*(iii) the heirs, assigns and personal representatives of a person referred to in subparagraph (i), and;*

*(iv) a person, other than a tenant using or occupying a residential premises, who*

*(A) is entitled to use or occupy the residential premises, and*  
*(B) exercises any of the rights of a person referred to in subparagraph (i) or (ii) under this Act or a rental agreement;*

11. As such, the claim is hereby amended to reflect the legal name of the landlord to be [REDACTED].

12. The landlord, [REDACTED], was represented at the hearing by [REDACTED] [REDACTED] on the direction of the owner of the company, [REDACTED].

The affidavit submitted by the tenants show that the landlord was served with the notice of this hearing on the **16 October 2019** by serving the documents to the landlord by serving the documents to the email address [REDACTED]. Verification of the email address and that it was sent to the parties is attached to the affidavit. The landlord has had **42 days** to provide a response.

## **Issues before the Tribunal**

13. The tenants are seeking the following:
  - a) Validity of Notice of Termination (section 18 and 20)
  

## **Legislation and Policy**

  14. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
  15. Also relevant and considered in this case are Sections 2, 8, 20, 34 and 35 of *the Act*, and Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

### **Issue 1: Validity of a Termination Notice**

#### Tenant Position

  16. The tenants are seeking to have a determination of the validity of a termination notice issued by the landlord on 01 October 2019 under section 18 and a second issued on 25 November 2019 under section 20 of the *Residential Tenancies Act, 2018*.
  17. Tenant1 testified that he feels the notice issued under section 18 is not valid because the landlord issued it in retaliation for the complaints he had submitted over the condition of the property.
  18. Tenant1 testified that he presented the landlord with several index cards of issues in the property on or about May 1, 2019. Tenant1 testified that because of the lack of movement on the requested repair of issues, he completed a formal Tenants Request for Repairs (**Exhibit T # 3**) giving the landlord until 10 October 2019 to complete the repairs. Tenant1 stated that the landlord came to fix the tub wall kit but never responded to any further item. Tenant1 further added that he never followed through regarding a claim to have the repairs completed and received a Notice of Termination on October 4, 2019 by regular mail (**Exhibit T # 1**).
  19. Tenant1 testified that on or about 04 November 2019 he messaged the landlord to advise them that a stop payment had been placed on the cheque for December rent. Tenant1 went on further to testify that they were in the process of changing banking information and did not want any cheques to bounce.

20. Tenant1 testified that on or about 25 November 2019, the landlord, through [REDACTED] [REDACTED], delivered another notice to terminate under section 20 of the *Residential Tenancies Act, 2018* (**Exhibit T # 2**). He testified that he feels that this notice is not valid as they did not terminate the lease but only notified of a stop payment on a cheque.

### Landlord Position

21. The landlord holds that the termination notice issued on 01 October 2019 for the intended termination date of 01 January 2020 under section 18 is valid and in compliance with the *Residential Tenancies Act, 2018*.

22. The landlord testified that all 7 units of this complex have received occupancy permits and were newly constructed up to current building codes. The landlord testified that they received excessive number of messages (texts and emails) concerning repairs required in one unit only of the 7 in the complex.

23. The landlord feels they are within their right as the landlord to issue a termination notice under section 18 of the Residential Tenancies Act and is seeking to have the notice issued (**Exhibit T # 1**) upheld and enforced.

24. The landlord further testified that on or about 04 November 2019, the landlord received a message that “cheque # 113 is cancelled”. The landlord testified that they took this message to mean that the tenants were terminating their agreement and that no rent for December would be paid.

25. The landlord testified that the notice to terminate (**Exhibit T # 1**) was served to the tenant by placing it in regular mail on 01 October 2019 after an attempt was made to serve it personally at the rented premises. The landlord further testified that the notice to terminate (**Exhibit T # 2**) was served personally to the tenants on 25 November 2019 by [REDACTED]. The landlord indicated that as of the hearing date (28 November 2019), the tenants remained in the unit.

### **Analysis**

26. The validity of the termination notices are determined by its compliance with the notice requirements identified in sections 18(9), 20(4) and 34 as well as the service requirements identified in section 35.

27. The termination notice issued by the landlord under section 18 is a notice that would be issued by a landlord to a tenant (*Typically referred to as a no cause notice*).

28. The termination notice issued by the landlord under section 20 is a notice that would be issued by a landlord to a tenant (*Notice where a material term of the*

agreement has been contravened).

29. Section 18(2)(b) requires that a landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises not less than 3 months before the end of a rental period where the residential premises is rented from month to month.
30. Section 18(9) further outlines the requirements for a notice. These requirements are definitive as it states the notice shall require:

***18(9) In addition to the requirements under section 34, a notice under this section shall***

- (a) be signed by the person providing the notice;***
- (b) be given not later than the first day of a rental period;***
- (c) state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and***
- (d) be served in accordance with section 35***

31. On examination of the termination notice issued and submitted into evidence (**Exhibit T # 1**), I find the notice was served on 04 October 2019 by regular mail. Referring to Section 35(2) of the *Residential Tenancies Act, 2018*, service of a document through regular mail is not a method of service permitted under the *Residential Tenancies Act, 2018* and reads:

***35 (2) A notice or other document under this Act other than an application under section 42 shall be served by a landlord on a tenant by***

- (a) giving it personally to the tenant;***
- (b) giving it to a person 16 years of age or older who apparently lives with the tenant;***
- (c) posting it in a conspicuous place on the tenant's residential premises;***
- (d) placing it in the tenant's mailbox or under a door in the tenant's residential premises;***
- (e) sending it to the tenant by prepaid registered mail or prepaid express post at an address***
  - (i) provided by the tenant, or***
  - (ii) where the tenant carries on business;***

*(f) sending it electronically where*

*(i) it is provided in the same or substantially the same form as the written notice or document,*

*(ii) the tenant has provided an electronic address for receipt of documents, and*

*(iii) it is sent to that electronic address; or*

*(g) sending it to the tenant by courier service at an address set out in paragraph (e).*

32. Additionally, the notice (**Exhibit T # 1**) does not state the last day of the rental period which in this case would be 31 December 2019 as the rental period begins on the 1<sup>st</sup> of each month.
33. The termination notice issued under section 20(2) & (3) requires that where a tenant contravenes a material breach of the agreement, the landlord may give the tenant a written notice of the contravention and within a reasonable amount of time after the notice has been served, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the premises not less than 1 month before the end of the rental period. The section reads as follows:

*20 (2) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes a material term of a rental agreement, the landlord may give the tenant written notice of the contravention, and if the tenant fails to remedy the contravention within a reasonable time after the notice has been served, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises.*

*(3) Where the tenant gives a landlord notice under subsection (1) or the landlord gives a tenant notice under subsection (2) that a rental agreement is terminated, the notice shall be given*

*(a) not less than 7 days before the end of a rental period where the residential premises is rented from week to week; and*

*(b) not less than one month before the end of a rental period where the residential premises is*

*(i) rented from month to month,*

*(ii) rented for a fixed term, or*

*(iii) a site for a mobile home.*

34. Examination of the termination notice (**Exhibit T # 2**) shows that the notice was issued on 25 November 2019 to terminate on 30 November 2019. Clearly not the 1 month notice required. The landlord did quote section 20(2) directly in the notice but failed to quote or did not read section 20(3) which is the actual termination notice requirements regarding time frames and is highlighted above.

35. In addition to the technical requirements of section 18(9) above and section 20(4) below, sections 34 identifies the technical requirements of the termination notice as also identified below. On examination of the termination notices issued by the landlord under section 18 and 20, I find that the notices issued by the landlord are not proper notices.
36. Specifically for the section 18 notice, (1) the date of termination is not the last day of the rental period which is in contravention of section 18(9)(c) and therefore making the notice not valid. (2) Additionally, the notice was served by regular mail as stated by the landlord and tenant1 and was not received by the tenants until 04 October 2019, which is in contravention of section 35(2) where regular mail is not a valid form of service and section 18(9)(b) which states that a notice shall be given not later than the first day of the rental period and as such would not be valid.
37. Specifically for the section 20 notice, (1) the landlord failed to provide the required time frame for the notices as indicated in section 20(3) of the *Residential Tenancies Act, 2018*.

**Section 20 (4)**

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

- (a) *be signed by the person providing the notice;*
- (b) *be given not later than the first day of a rental period;*
- (c) *state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which 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.*

38. Additionally, regarding the section 20 notice issued, the landlord has testified that when they received a text message from the tenants indicating he had cancelled or placed a stop payment on the December rent cheque, they made the assumption that the tenants were terminating their agreement. There is nothing in the text from the tenants to indicate that the agreement has been terminated. The landlord has erred in making this assumption and in doing so has made an

error in securing a new tenant for the rented premises.

39. According to the reasons identified above in paragraphs 31, 32, 34, 36 and 37, I find that the termination notices issued by the landlord under section 18 and 20 to be not proper and therefore not valid nor effective in law.

### **Decision**

40. The termination notices issued under section 18 and 20 by the landlord is determined to be not valid nor effective in law.

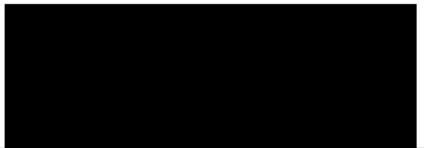
### **Summary of Decision**

41. The termination notices issued under section 18 and 20 by the landlord is determined to be not valid nor effective in law.

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13 December 2019

**Date**



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Michael Greene  
Residential Tenancies Tribunal