

Residential Tenancies Tribunal

[REDACTED] Decision 19-0081-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 1:30 pm on 26 November 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and via Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as the tenant, participated in the hearing (**Affirmed.**)
3. The respondent, [REDACTED], hereafter referred to as the landlord, participated in the hearing (**Affirmed**).
4. 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

5. The affidavit submitted by the tenant shows that the landlord was served with the notice of this hearing on the **30 October 2019** by serving the documents to the landlord at the email address [REDACTED]
6. The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **15 November 2019** by serving the documents to the landlord at the email address [REDACTED]
7. Landlord witness – [REDACTED] (CI) (*Sworn Statement*)

8. Landlord Witness – [REDACTED] (CM) (*Sworn Statement*)
9. Landlord Witness – [REDACTED] (JT) (*Sworn Statement*)

Issues before the Tribunal

10. The landlord is seeking the following:

- a) Vacant Possession
- b) Hearing expenses

11. The tenant is seeking the following:

- a) Validity of Termination Notice

Legislation and Policy

12. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
13. Also relevant and considered in this case are Sections 24, 34 and 35 of *the Act*; Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*; Policy 9-3: *Claims for Damages to the Rental Premises*.

Issue 1: Validity of Notice/Vacant Possession

Relevant Submissions

Tenants Position

14. The tenant is seeking an order to determine the validity of a termination notice issued by the landlord (**Exhibit L # 4**) on 08 October 2019 for the intended termination date of 31 October 2019.
15. The tenant testified that she moved into the property in the 1st week in May 2019 and was not home most of the summer. She testified that she was going through a family crisis which took up most of her time.
16. The tenant testified that she does not smoke or smoke weed in the rented premises, but added that she does smoke cigarettes and weed outside the unit.

Landlords Position

17. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
18. The landlord testified that the tenant has become disruptive at the property and the aggressive nature is not a good fit for the building.
19. The landlord referred to three witness statements from CM, CI, and JT (Exhibits L # 1, 2 and 3) to demonstrate the issues that the tenant has been causing during the tenancy.
20. Each of the witnesses account for specific time and dates of incidents of noise and disruption in their lives as adjacent tenants to the respondent. The common themes across each statement is that of noise, argument loud party like atmosphere at late hours in the night and into the early hours of the morning.
21. In addition to the complaints from the adjoining tenants, the landlord indicates that there is no valid contact information for the tenant and that on several attempts to gain entry to the property with proper notice, was not successful. He stated that he did not enter if they did not answer as he didn't feel comfortable doing that. The landlord stated that he lives and works away so most of this inspections etc., is left up to his father and he did not want to get his father involved.
22. The landlord further added that a notice to inspect was placed on the door and at the scheduled time of entry, nobody answered. After 10 minutes, his father was going to open the door and as the key was being placed in the door, the tenant opened it and accused him of entering while she was showering.
23. The landlord has stated that the tenant has interfered with the peaceful enjoyment of the adjoining tenant by creating an uncomfortable atmosphere with the party like noise, the drugs and the screaming and arguing. Similarly, she has interfered with the landlord's peaceful enjoyment by blocking entry to the property.

Analysis

24. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 24(2) and 34 as well as the service requirements identified in section 35.
25. The issue of interference with peaceful enjoyment of the property is clearly related to the noise levels at late hours and the intimidating nature of the tenant.

26. The landlord issued a termination notice under section 24 of the *Residential Tenancies Act* by personally delivering a copy to the tenant at the rented premises. Section 24 requires that the landlord provide notice to the tenant that the rental agreement is terminated and the tenant is required to vacate the property on a specified date not less than 5 days after the notice has been served.
27. The landlord witness testimony in the form of the witness statements is consistent and is detailed with respect to dates and times across all three statements. The tenant has made statements that none of what she is being accused of happened and was merely some friends over having a conversation. The tenant did not provide any sort of evidence to counter the allegations of the landlord. As the landlord's claims has been independently supported in evidence, I accept the evidence of the landlord and find that the tenant has interfered with the peaceful enjoyment and reasonable privacy of the adjoining tenants and the landlord by being loud at late hours at night, by being confrontational and by prohibiting the landlord entry to the property.
28. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 4**), I find the notice was served on 08 October 2019 with a termination date of 31 October 2019. As established above, the tenant has interfered with the peaceful enjoyment of the adjoining tenants and landlord. I further find that as the date of termination identified on the notice is not less than 5 days after the notice has been served 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.*

29. As identified above, the landlord testified that he served the termination notice by personal service which is a permitted method of service identified under section 35.
30. 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

31. 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.

Issue 3: Hearing Expenses

Tenant Position

32. The tenant paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL [REDACTED] (**Exhibit T # 1**). The tenant is seeking this cost.

Landlord Position

33. 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 # 5**). The landlord is seeking this cost.

Analysis

34. I have reviewed the testimony and evidence of the landlord and tenant in this matter. The landlord's claim has been successful and 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*. As such, I find the tenant is responsible to cover these reasonable expenses of the landlord.

Decision

35. The tenant shall pay the reasonable expenses of the landlord in the amount of \$20.00.

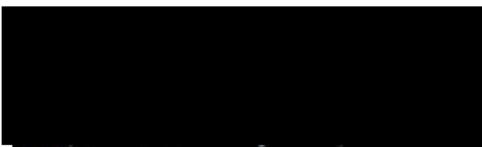
Summary of Decision

36. The landlord is entitled to the following:

- a) Hearing Expenses \$20.00
- b) **Total Owing Landlord** **\$20.00**
- c) Vacant Possession of the Rental Property
- d) The landlord is further awarded costs associated with the enforcement of the Possession Order by the High Sheriff of NL.

18 December 2019

Date


Michael Greene
Residential Tenancies Tribunal