

Residential Tenancies Tribunal

[REDACTED] Decision 19-0087-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 11:00 am on 05 November 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] - **Affirmed**, hereafter referred to as tenant1, participated in the hearing. (Represented by [REDACTED] - **Affirmed**)
3. The applicant, [REDACTED], hereafter referred to as tenant2, did not participate in the hearing. (Absent and Not Represented)
4. The respondent, [REDACTED], hereafter referred to as the landlord, participated in the hearing. (Represented by [REDACTED] (Sworn) – Chair and [REDACTED] (Sworn) – Board Member)
5. The details of the claim were presented as a verbal monthly rental agreement with rent set at \$555.00 per month and due on the 1st of each month. The security deposit was waived for this tenancy. The landlord issued a termination notice dated 09 July 2019 for the intended termination date of 31 July 2019 under no stated section of the *Residential Tenancies Act, 2018*.
6. 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

7. The affidavit submitted by the tenants show that the landlord was served with the notice of this hearing on the **07 October 2019** by serving the Application for Dispute Resolution documents to [REDACTED] who is an employee of [REDACTED] at [REDACTED].

Issues before the Tribunal

8. The tenants are seeking the following:
 - a) Validity of Notice of Termination (no section stated)

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 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

11. The tenants are seeking to have a determination of the validity of a termination notice issued by the landlord on 9 July 2019 under no stated section of the *Residential Tenancies Act, 2018*.
12. Tenant1 testified that he feels the notice is not valid as he has not smoked inside the rental unit as has been indicated in the termination notice (**Exhibit T # 1**). Tenant1 has conceded that he did smoke on the property outside denies that any smoking occurred inside.
13. Tenant1 submitted into evidence a copy of the termination notice that was issued (**Exhibit T # 1**) on 9 July 2019.

Landlord Position

14. The landlord testified that tenant1 was fully aware that there was a no smoking policy in place as is indicated at the application stage of the tenancy from his application to rent in 2013. The landlord stated that the units are social housing units and they are bound by a set record off covenants between their funding partners [REDACTED] and [REDACTED] [REDACTED], one of which is to maintain a non-smoking building and grounds.
15. The landlord first became aware of the smoking issue of tenant1 on or about April 23, 2019 at which time a general letter was distributed to all tenants of the building. The landlord testified that subsequent letters were addressed to tenant1 after it was noticed by the Property Chair and/or other tenants who complained of tenant1 smoking. The landlord stated that on 09 July 2019 a notice to terminate was issued to the tenants (**Exhibit T # 1**).

Analysis

16. The validity of the termination notice is determined by its compliance with the notice requirements identified in section 34 as well as the service requirements identified in section 35.
17. The termination notice issued by the landlord under no stated section of the *Residential Tenancies Act, 2018* does not clearly identify a particular reason for the issuances of the notice as it relates to the legislation. It does state under #2 of the notice "*You are in violation of your lease by continued smoking in your apartment and surrounding property*".
18. The notice does not direct me to a section of the Act to draw what is required for the notice. However, Section 34 (d) does indicate that a requirement in any notice issued under the *Residential Tenancies Act, 2018* to "state the section of this Act under which the notice is given". On examination of the termination notice issued and submitted into evidence (**Exhibit T # 1**), I find the notice did not state the section of the Act for which the notice is issued. This is not in compliance with section 34 of the Act.
19. Section 34 identify the technical requirements of the termination notice as identified below. On examination of the termination notice, I find that the notice issued by the landlord is not a proper notice. Specifically, (1) the notice section is not quoted and as such would render the notice to not be valid.

20. As identified above, the landlord testified that the notice was served personally which is a permitted method of service identified under section 35.
21. According to the reasons identified above, I find that the termination notice issued by the landlord to be not proper and therefore not valid.

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.*

Decision

22. The termination notice issued by the landlord and dated 09 July 2019 is determined to be not valid nor effective in law.

Summary of Decision

23. The termination notice issued by the landlord and dated 09 July 2019 is determined to be not valid nor effective in law.

06 November 2019

Date

Michael Greene
Residential Tenancies Tribunal