

Residential Tenancies Tribunal

Decision 19-0101-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 11:30 am on 14 January 2020 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 the tenant, participated in the hearing. (*Affirmed*).
3. The respondent, [REDACTED], hereafter referred to as the landlord, participated in the hearing (*Affirmed*).
4. The details of the claim were presented as a written monthly rental agreement with rent set at \$400.00 per month and due on the 1st of each month. There was no security deposit collected on this tenancy.
5. The landlord issued a termination notice dated 19 Nov 2019 for the intended termination date of 30 Nov 2019 under Section 18 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. It was determined at the hearing that the named landlord, [REDACTED], was not the landlord and was acting on behalf of the landlord, [REDACTED]. An amendment was made to remove [REDACTED] from the claim and add [REDACTED] as Landlord.
8. The landlord is considered served in this regard and was accepted by [REDACTED].

Issues before the Tribunal

9. The tenant is seeking the following:
 - a) Validity of Notice of Termination (section 24)
 - b) Compensation for Inconvenience (\$560.00)
 - c) Hearing Expenses

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
11. Also relevant and considered in this case are Sections 24, 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

12. The tenant is seeking to have a determination of the validity of a termination notice issued by the landlord on 19 November 2019 under section 24 of the *Residential Tenancies Act, 2018*.
13. The tenant testified that she feels the notice issued under section 24 is not valid because the landlord issued it in retaliation for the complaints she addressed concerning the fees paid to the Local Service District (LSD) for municipal services.

14. The tenant testified that she only tried to get answers about the municipal services and had to contact the person she thought to be her landlord about it.

Landlord Position

15. The landlord holds that the termination notice issued on 19 November 2019 for the intended termination date of 30 November 2019 under section 24 is valid and in compliance with the *Residential Tenancies Act, 2018*.
16. The landlord testified that the tenant was fully aware that she was responsible for the municipal fees associated with the property. The landlord referred to the rental agreement (**Exhibit T # 2**) submitted into evidence by the tenant.
17. The landlord testified that the tenant was “freaking out” about the garbage and municipal fees. The landlord stated that she was blocking access to another property. There was no witnesses presented at the hearing.

Analysis

18. The validity of the termination notices are 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 in addition to the reasoning for its issuance.
19. The termination notice issued by the landlord under section 24 is a notice that would be issued by a landlord to a tenant when the landlord feels that the tenant has interfered with the peaceful enjoyment or reasonable privacy of the landlord.
20. Section 24(1) 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 on a specified date not less than 5 days after the notice has been served.
21. Section 24(2) further outlines the requirements for a notice. These requirements are definitive as it states the notice shall require:

24(2) In addition to the requirements under section 34, a notice under this section shall

- (a) be signed by the person providing the notice;***
- (b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and***
- (d) be served in accordance with section 35***

22. On examination of the termination notice issued and submitted into evidence (**Exhibit T # 3**), I find the notice was served on 19 November 2019 by personal service. Referring to Section 35(2) of the *Residential Tenancies Act, 2018*, this is an acceptable method of service permitted under the *Residential Tenancies Act, 2018* which 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).***

23. In addition to the technical requirements of section 24(2) above, sections 34 identifies the technical requirements of the termination notice as also identified below. On examination of the termination notice issued by the landlord under section 24, I find that the notice issued by the landlord is a proper notice technically.

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.***

24. Regarding the merits, or the reasoning for the issuance of the termination notice, the landlord has made some statements why they feel the tenant has interfered with the peaceful enjoyment of the property. However, the landlord has not substantiated any of the claims with corroborating evidence. The landlord has stated that she could not secure any witnesses with the exception of her father who was acting as agent for the property. In the opinion of the tribunal, the father of the landlord has a skewed conflict of interest, as can reasonably be expected given the relationship, and this testimony alone cannot be held as corroborating evidence.
25. There is no supporting evidence for the position in issuing a short “for cause” notice and as such, the merits of the notice do not hold to any legal test.
26. According to the reasons identified above, I find that the termination notice issued by the landlord under section 24 of the *Residential Tenancies Act, 2018* to be not proper and therefore not valid nor effective in law.

Decision

27. The termination notices issued under section 24 by the landlord is determined to be not valid nor effective in law.

Issue 2: Compensation for Inconvenience

Tenant Position

28. The tenant is seeking to be compensated for the payment of municipal services which she feels is the responsibility of the landlord and owner of the property.
29. The tenant testified that she paid the fees to the Local Service District (LSD) in order to secure her garbage collection and water services. The tenant submitted into evidence receipts for the payment of the fees (**Exhibit T # 1**) in the amount of \$560.00 for January – June 2019 and November – December 2019.

Landlord Position

30. The landlord testified that the tenant was fully aware that the fees for the LSD was the tenant’s responsibility from the beginning of the tenancy. The landlord referred to the series of text messages between the landlord and tenant (**Exhibit L # 1**) in which the tenant acknowledges that she has to “pay the town”. The landlord further submitted a series of Town Invoices and copy of Town Policies regarding fees (**Exhibit L # 3**).

31. Lastly the landlord referred to the actual rental agreement (**Exhibit T #2**) which does not include payment of taxes.

Analysis

32. The validity of any contract rests in the notion that the contract was entered into by both parties free from coercion or duress. There was no evidence or argument led by either party to this effect so I can rest on the notion that both parties freely entered into the rental agreement with both eyes wide open.
33. I will deal with the technical aspects of the rental agreement on the outset. Section 7 outlines the services included in the rent being paid. The service includes (1) Hot Water, (2) Refrigerator, (3) Parking and (4) Washer & Dryer. There is no indication in this section that things like Water Tax or Property Tax are included in the rent being paid.
34. Property tax is municipal tax paid by the owner of a property for municipal services to that property. This is typically recovered from a tenant through rent charged unless otherwise stipulated in an agreement.
35. The tenant herself has acknowledged paying the municipal fees.
36. The text messages between the landlord and tenant do indicate that the tenant had to "pay the town" which I can only interpret that she meant the municipal fees which the tenant has acknowledged paying.
37. The evidence in this matter is clear and conclusive. I find that the tenant was keenly aware that it was her responsibility from the beginning of the tenancy that the municipal service fees were hers to pay.
38. I find that the tenant is responsible for the municipal service fees and as such, the claim for compensation for inconvenience, namely payment of municipal service fees, fails.

Decision

39. The tenant's claim for compensation for inconvenience fails.

Issue 3: Hearing Expenses

Tenant Position

40. 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 #4**). The tenant is seeking this cost.

Analysis

41. I have reviewed the testimony and evidence of the tenant in this matter. The expenses incurred by the tenant 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 landlord is responsible to cover these reasonable expenses.

Decision

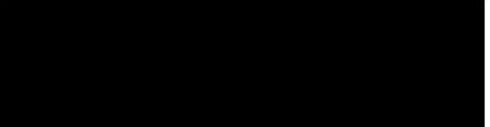
42. The landlord shall pay the reasonable expenses of the tenant in the amount of \$20.00.

Summary of Decision

43. The termination notices issued under section 24 by the landlord is determined to be not valid nor effective in law.
44. The tenant's claim for compensation for inconvenience fails.
45. The landlord shall pay the reasonable expenses of the tenant in the amount of \$20.00.

4 February 2020

Date


Michael Greene
Residential Tenancies Tribunal