

Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0472-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **11:00 am** on **06 November 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 landlord, participated in the hearing - *Affirmed*.
3. The respondent, [REDACTED] hereafter referred to as the tenant, participated in the hearing - *Affirmed*.
4. The details of the claim were presented as a monthly rental agreement with rent set at \$1000.00 per month and due on the 1st of each month. It was stated that there was a security deposit collected in the amount of \$750.00 on this tenancy on 01 October 2019. The landlord issued a termination notice dated 08 October 2020 for the intended termination date of 19 October 2020 under Section 19 of the *Residential Tenancies Act, 2018*.
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 affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **23 October 2020** by serving the application for dispute resolution document to the tenant personally.
7. There was no hearing expenses claimed.
8. The landlord amended the claim at the hearing to:
 - a. Reflect the legal spelling of his first name to be Donald.

Issues before the Tribunal

9. The landlord is seeking the following:
 - a) Vacant possession of the rented premises
 - b) 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 19, 34 and 35 of *the Act*, and Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Rent Owning

Relevant Submissions

Landlord Position

12. The landlord stated that he had entered into a rental agreement with the tenant, commencing 01 October 2019. The agreed rent was set at \$1000.00 per month and due on the 1st day of each month with a security deposit in the amount of \$750.00 collected on this tenancy. The landlord issued a termination notice (**Exhibit L # 2**) on 08 October 2020 for the intended date of 19 October 2020 (section 19). The landlord stated that rent was outstanding in the amount of \$2000.00 (**Exhibit L # 1**) for the period ending 30 November 2020 and stated as of the hearing date 06 November 2020 rent remains outstanding.

Tenant Position

13. The tenant testified that he wasn't aware of the hearing until last evening when he finally reviewed his paperwork. He claims to have been confused given the landlord supplied what he refers to as three separate termination notices (1) issued on 01 October 2020, (2) issued on 08 October 2020 and (3) issued on 23 October 2020. The tenant did not submit these notices into evidence to be examined.
14. The tenant testified that he has been working through some personal issues and was trying to secure another location to live.
15. Through the tenant's testimony, he alluded to the 23 October 2020 service. It is apparent that the tenant may have been referring to the service of the claim documents on this date.
16. The tenant ultimately acknowledges that he hasn't paid rent for October or November 2020 as claimed by the landlord.

Analysis

17. I have reviewed the testimony and evidence of the landlord in this matter. As far as I can see, there is one issue here that needs to be addressed: (i) is the rent that is being claimed by the landlord actually owed by the tenant.
18. With respect to the arrears, I agree with the landlord that rent is owed. Rent is required to be paid by the tenant for use and occupation of the rented premises as set out in the rental agreement established when the tenancy began. Records are clear that rent for the period ending 31 August 2020 is outstanding. A specific calculation of the amount outstanding is not required as the landlord has not sought an order for the amount outstanding. It is sufficient to determine that at the time of the issuance of the termination notice and the termination date that rent was outstanding. I find that rent was outstanding at the effective date of the termination notice.

Decision

19. The landlord has adequately shown that rent was outstanding at the termination date on the notice issued.

Issue 3: Vacant Possession of the Rented Premises

Landlord Position

20. The landlord is seeking to recover possession of the rented premises located at [REDACTED]

21. The landlord testified that the tenant has failed to pay rent as required by the rental agreement and has accumulated rental arrears. The landlord submitted a copy of the termination notice (**Exhibit L # 2**) issued to the tenant on 08 October 2020 for the intended termination date of 19 October 2020 thereby terminating the tenancy effective 19 October 2020.
22. The landlord testified that the notice to terminate was issued to the tenant by posting it to the rented premises door on 08 October 2020 as per section 35(5) of the *Residential Tenancies Act, 2018*. The landlord indicated that as of the hearing date (06 November 2020), there is 1 adult living in the unit.

Tenant Position

23. The tenant disputes the claim for vacant possession claiming he didn't have to pay the rent as he was issued a termination notice.

Analysis

24. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 19(4) and 34 as well as the service requirements identified in section 35.
25. The issue of rental arrears has been established above. There is no doubt that the tenant owes rent to the landlord and has failed to pay all the arrears by the ending date of the termination notice (19 October 2020).
26. The landlord issued a termination notice under section 19 of the *Residential Tenancies Act* by posting a copy of same to the rented premises door. Section 19 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 10 days after the notice has been served. I accept the evidence of the landlord and find that the tenant failed to make the required rent payments thereby accumulating rental arrears as calculated.
27. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 2**), I find the notice was served on 08 October 2020 with a termination date of 19 October 2020. As established above, the tenant has outstanding rent beyond the date of termination. I further find that as the date of termination identified on the notice is not less than 10 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 19(4). Sections 19 (4) 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 19 (4)

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.*

- 28. As identified above, the landlord testified that he served the termination notice by way of a permitted method of service identified under section 35.
- 29. 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

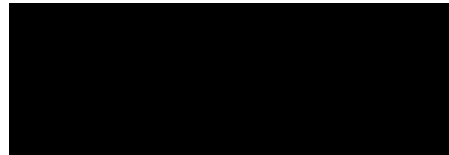
- 30. The landlord's claim for vacant possession succeeds. The landlord is further awarded costs associated with the enforcement of the Possession Order by the High Sheriff of NL.

Summary of Decision

31. The landlord is entitled to the following:
- a) Vacant Possession of the Rented Premises.
 - b) 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.

10 November 2020

Date



Michael Greene
Residential Tenancies Tribunal