

Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0530-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **1:00 pm** on **02 December 2020** 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 landlord, participated in the hearing and was represented by [REDACTED] – Property Manager. (*Affirmed*).
3. The respondent, [REDACTED] hereafter referred to as tenant1, participated in the hearing. (*Affirmed*).
4. The respondent, [REDACTED] hereafter referred to as tenant2, participated in the hearing. (*Affirmed*).
5. In a proceeding under the *Residential Tenancies Act*, 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

No issues raised prior to the hearing.

Issues before the Tribunal

6. The landlord is seeking the following:
 - a) Vacant possession of the rented premises;
 - b) Hearing expenses.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
8. Also relevant and considered in this case are Sections 18, 34 and 35 of *the Act*; and Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Vacant Possession of the Rented Premises

Landlord Position

9. The landlord is seeking to recover possession of the rented premises located at [REDACTED]
10. The landlord testified that they have issued a termination notice under section 18 of the legislation and are looking to have the property returned to their possession.
11. The landlord submitted the termination notice under Section 18 of the Act **(Exhibit L # 1)** to terminate the tenancy on 31 October 2020. The landlord testified that the notice was served personally and as of the hearing date (02 December 2020), the tenants remained in the unit. The landlord testified that there are 2 adults living in the unit.

Tenant Position

12. The tenants do not dispute receiving the termination notice and state that they intend to vacate the property. The tenants explained that they are seeking more time to find a place.

Analysis

13. Established by undisputed statement of fact above, the rental agreement is a written fixed term tenancy which is set to expire on 31 October 2020. The validity of the termination notice is determined by its compliance with the notice requirements identified in Sections 18(2)(c), (9) and 34 as well as the service requirements identified in Section 35.
14. Section 18(2)(c) requires that a landlord shall give a tenant a termination notice that the rental agreement is terminated and the tenant is required to vacate the rental premises not less than three months before the end of the term where the premises are rented for a fixed term. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 1**), I find the notice was served on 30 July 2020 with a termination date of 31 October 2020. I find that as the date of termination identified on the notice is three months before the end of the term, the termination notice is in full compliance with the requirements of Section 18(2)(c).
15. Sections 18 (9) and 34 below identify the technical requirements of the termination notice. On examination of the termination notice, I find it all these criteria have been met.

Section 18 (9)

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

- (a) be signed by the landlord;*
- (b) be given not later than the first day of a rental period*
- (c) 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.*

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.*

16. As identified above, the landlord testified that the termination notice was served personally which is a permitted method of service identified under Section 35.

17. 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

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

Issue 2: Hearing Expenses

Landlord Position

19. The landlord paid a fee in the amount of \$26.89 for the service of documents via Canada Post (**Exhibit L # 2**). The landlord is seeking this cost.

Analysis

20. I have reviewed the testimony and evidence of the landlord and tenant in this matter. The expenses incurred by the landlord is 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* in the event the claim has been successful. As the landlord's claim has been successful, I find the tenant shall cover the reasonable expenses of the landlord.

Decision

21. The landlord's claim for hearing expenses succeeds in the amount of \$26.89.

