

Residential Tenancies Tribunal

Decision 20-0006-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 1:30 pm on 11 February 2020 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland via Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing. The landlord was represented by [REDACTED] – **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 written monthly rental agreement with rent set at \$740.00 per month and due on the 1st of each month. There was a security deposit in the amount of \$555.00 collected on the tenancy on or about 03 July 2018. The landlord issued a termination notice dated 07 January 2020 for the intended termination date of 13 January 2020 under Section 24 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. After the hearing was concluded it was noted that the legal name of the applicant was not [REDACTED] but is [REDACTED]. With the approval of the applicant, the name of the applicant was changed to reflect the legal name of the landlord.
7. The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **23 January 2020** by serving the Application for Dispute Resolution documents to the tenant personally at the rental address.

Issues before the Tribunal

8. The **Landlord** is seeking the following:
 - a) Vacant possession of the rented premises
 - b) Hearing expenses

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 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 Notice/Vacant Possession of the Rented Premises

Landlord Position

11. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
12. The landlord testified that they are looking to have their property returned as per section 24 the *Residential Tenancies Act, 2018*.

13. The landlord testified that the rental agreement is a month to month tenancy (**Exhibit L # 2**). The landlord further testified that a notice to terminate was issued on 07 January 2020 under Section 24 of *the Act* (**Exhibit L # 1**) to terminate the tenancy on 13 January 2020. The landlord testified that the notice to terminate was served personally by the landlord to the tenant on 07 January 2020. The landlord indicated that as of the hearing date (11 February 2020), the tenant remained in the unit. There is 1 adult living in the unit.
14. The landlord testified that the tenant has been displaying abusive behavior towards the superintendent of the building. The landlord stated that she can't prove what she is claiming and indicated that it is a he said/she said situation.
15. The landlord is seeking vacant possession of the property.

Tenant Position

16. The tenant testified that he received the notice to terminate the tenancy (**Exhibit L # 1**).
17. The tenant testified that it is his opinion that the landlord is terminating her tenancy for an invalid purpose. The tenant testified that he was in no way abusive towards the landlord. He stated that he was trying to pay his rent but the landlord was not available in the office. The tenant stated that he always pays his rent as required.
18. The tenant states he doesn't have a problem in the building and that the landlord is giving him a hard time. The tenant lastly said "*I didn't say anything to the woman*".

Analysis

19. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 24 and 34 as well as the service requirements identified in section 35.
20. Section 24 requires that when a premises is rented for month to month, the landlord can 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. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 2**), I find the notice was served on 07 January 2020 with a termination date of 13 January 2020. I 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 18 (2) (b). Sections 24 (2) and 34 identify the technical requirements of the termination notice as identified below. On examination of the termination notice, I find that all these criteria have been met.

21. The section 24 notice that has been issued requires that the applicant show on the balance of probabilities that there was just cause for the issuance of a short notice. The landlord has given all the evidence there is required to determine if the validity of the notice has been supported. The landlord has stated that I can't prove this as it is a he said/she said situation. The landlord was fully aware that there is no supporting or corroborating evidence that will support the issuance of a short notice under section 24.
22. As identified above, the landlord testified that the termination notice was served personally which is a permitted method of service identified under section 35.

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.*

23. According to the reasons identified above, I find that the termination notice issued by the landlord to be not valid as the landlord has failed to provide corroborating evidence to support the issuance of the short notice. Therefore, the landlord's claim for vacant possession fails.

