

Residential Tenancies Tribunal

Decision 20-0009-04

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 11:30 am (Atlantic Time) on **12 May 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 landlord, [REDACTED], hereafter referred to as landlord, participated in the hearing. The landlord was represented by, [REDACTED] (*Affirmed*).
3. The tenant, [REDACTED], hereafter referred to as tenant, participated in the hearing (*Affirmed*).
4. The details of the claim were presented as a written monthly rental agreement with rent set at \$600.00 per month and due on the 1st of each month. There was no security deposit taken on the tenancy. The landlord indicated that a termination notice was issued to the tenant on 08 April 2020 for the intended termination date of 14 April 2020 under Section 24 of the *Residential Tenancies Act*, 2018.
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

6. The tenant questioned who the actual landlord was in this matter and couldn't understand where [REDACTED] has come into the picture. The landlord representative explained that the property is owned by [REDACTED] and

managed by [REDACTED] & [REDACTED], who are also part owners of [REDACTED]. The representative presented property tax verification from the town (**Exhibit L # 3**) indicating [REDACTED] is the registered owner with the Town.

7. Both files were amended to reflect [REDACTED] as the landlord in this matter.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a) Vacant possession of the rented premises;
9. The tenant is seeking the following:
 - b) Validity of a termination notice;

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*.

Issue 1: Vacant Possession of the Rented Premises/ Validity of Notice

Landlord Position

12. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
13. The landlord testified that there has been consistent trouble with the tenant. He stated that the other tenants of the building are complaining of noise in the building, fighting in the parking lot with unknown persons. He stated that the Royal Canadian Mounted Police (RCMP) have been at the property on several occasions and that a couple of tenants have moved their families away from the building for a period as a result of the actions of the respondent.
14. The landlord testified that the tenants in the building are scared and fearful as a result of the respondent.

15. The landlord submitted into evidence two termination notices into evidence:
 - a. **Exhibit L # 1:** Termination Notice dated 08 April 2020 to terminate the tenancy on 14 April 2020 under section 24 of the *Residential Tenancies Act, 2018*.
 - b. **Exhibit L # 2:** Termination Notice dated 13 March 2020 to terminate the tenancy on 19 March 2020 under section 24 of the *Residential Tenancies Act, 2018*.
16. The landlord stated that he is seeking an order of vacant possession based on the notice issued on 08 April 2020 (**Exhibit L # 1**). The landlord did not call any witnesses or present any sworn statements as evidence.

Tenant Position

17. The respondent in this matter fully acknowledges that the neighbors are scared in their homes. She further added that the landlord is not lying in his presentation to the tribunal and what he said is accurate.
18. The tenant stated that her foster brother was the person who was in the parking lot fighting. She stated that an altercation started in the building and was witnessed by a neighbor who was visibly scared. She stated that he was upset as a result of the suicide of his girlfriend in [REDACTED]. The tenant stated that her best friend was escorting her foster brother from the building and in the parking lot it appeared that an altercation may have occurred.
19. The tenant states she has taken steps to place a peace bond against her foster brother but no paperwork has been filed.
20. The tenant testified that in the morning of [REDACTED] she had called her foster brother and invited him to come over to her place for a meal. She states he did arrive and became out of control so she contacted the RCMP to deal with him.
21. The tenant further testified that there was also an incident at the property with the same person in [REDACTED] which resulted in a termination notice in March 2020 (**Exhibit L # 2**).

Analysis

22. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 24 (1), 10(1) 7(a) and 34 as well as the service requirements identified in section 35.

23. The issue of interference of peaceful enjoyment and reasonable privacy of the landlord and/or adjacent tenants has been outlined by the testimony of the landlord and the tenant herself. The supporting information of the landlord's complaints comes only from the testimony and acknowledgement of the tenant's testimony and statements at the hearing.
24. The tenant has acknowledged that there was a history of issues at the property with her foster brother which resulted in a termination notice being issued and yet again she willingly invited him into the property. This invite resulted in another incident and disruption to the lives of the other tenants in the building.
25. The tenant is responsible for the actions of those whom she invites on the premises and as a result, the actions of her foster brother causing a disturbance for the other tenants is as though she created the disturbance herself.
26. I find that the tenant has created or invited someone onto the premises who created a disturbance and interfered with the peaceful enjoyment and reasonable privacy of the landlord and adjacent tenants of the building in contravention of statutory condition 7(a) of the *Act*.
27. Section 24 (2) requires that when a tenant contravenes statutory condition 7(a) as set out in section 10(1) of The Act, the landlord may terminate the tenancy 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 # 1**), I find the notice was served on 08 April 2020 with a termination date of 14 April 2020. As established above, the respondent is in contravention of statutory condition 7(a) of *The Act*. I further find that as the date of termination identified on the notice is at least 5 clear days between the date the notice was issued and the date the tenant is required to move out, the termination notice is in full compliance with the requirements of section 24 (2). Sections 24 (2) and 34 identify the technical requirements of the termination notice as identified below. On examination of the termination notice, I find all these criteria have been met.

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.*

28. As identified above, the landlord testified that they served the termination notice personally which is 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

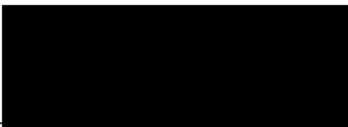
30. The landlord's claim for vacant possession succeeds. The landlord is further awarded costs associated with the enforcement of the Possession Order by the High Sheriff of NL.

Summary of Decision

31. The landlord is entitled to the following:
- a) Vacant Possession of the Rented Premises
 - b) Any incurred costs from the High Sheriff of NL associated with enforcement of the attached Possession Order.

21 May 2020

Date


Michael Greene
Residential Tenancies Tribunal