

Residential Tenancies Tribunal

Decision 20-0025-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 1:30 pm on 27 May 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 landlord1, participated in the hearing. **Affirmed.**
3. The applicant, [REDACTED], hereafter referred to as landlord2, participated in the hearing. **Affirmed.**
4. The respondent, [REDACTED], hereafter referred to as the tenant, participated in the hearing – **Affirmed.**
5. The details of the claim were presented as a written monthly rental agreement commencing on 01 May 2019 with rent set at \$600.00 per month and due on the 1st of each month. There was a security deposit in the amount of \$300.00 collected on the tenancy on or about 28 Feb 2019. The landlord issued two termination notices dated 30 April 2020 for the intended termination date of 06 May 2020 under Section 22 and 24 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. The claim was amended at the onset to add the 2nd landlord as [REDACTED] as a second person with legal title to the property.
8. The tenant, [REDACTED], requested a postponement of the proceedings for the purpose of securing legal counsel. The tenant testified that he has sought counsel from Legal Aid and was advised that they do not represent clients at matters of Residential Tenancies. [REDACTED] further testified that he cannot afford a private lawyer. When asked what his plan was to secure counsel, he did not provide a plan of action.
9. The tenant indicated that he was not familiar with the proceedings enough to do it alone and wished representation. He asked if another person could represent him that's not a lawyer and was given the approval for this. He indicated that the only person he knew was his cousin (No name provided), who happened to be in the unit with the tenant at the time of the hearing. The tribunal advised the tenant that the cousin could represent and nothing came of this from the tenant.
10. The tenant began to chat about the landlord not having probable grounds to enter the property....etc. At this point I made the determination that the tenant was attempting to stall the proceedings and denied any postponement. It was clear that the tenant was familiar with legal proceedings and was able to provide his side of the story to the tribunal.
11. The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **12 May 2020** by serving the original documents by registered mail.

The tenant has had **14 days** to provide a response.

Issues before the Tribunal

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

Legislation and Policy

13. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
14. Also relevant and considered in this case are Sections 22, 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: Vacant Possession of the Rented Premises

Landlord Position

15. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
16. The landlord testified that he is looking to have his property returned as per section 22 and 24 the *Residential Tenancies Act, 2018*.
17. The landlord testified that the rental agreement is a written monthly rental agreement with rent set at \$600.00 per month exclusive of utilities. The landlord further testified that two notices to terminate were issued on 30 April 2020 under Section 22 & 24 of *the Act* (**Exhibit L # 6 & 7**) to terminate the tenancy on 06 May 2020. The landlord testified that the notices to terminate was served personally to the tenant on 30 April 2020. The landlord indicated that as of the hearing date (27 May 2020), the tenant remained in the unit. There is 1 adult living in the unit.
18. The landlord testified that there were a number of reasons for the issuance of the notice. First, the landlord testified that the tenant was exhibiting behaviors related to hoarding by having significant amounts of auto and bike parts around the property, tools everywhere and garbage left around the unit.
19. The landlord testified that there was an extreme smell of cannabis and oil and gas in and around the property which lead him to inspect the property. The landlord testified that an inspection of the property was completed on or about 14 January 2020 at which time it was noted that there were many auto parts left around and what appeared to be a “grow op” happening in the living room of the unit. The landlord referred to photos dated 14 January 2020. (**Exhibit L # 3**).
20. The landlord testified that he had enough of the things around the property, what he described as cannabis so he issued a Notice to Complete Repairs (**Exhibit L # 2**) on 28 April 2020, which was to be completed by 30 April 2020.

21. The landlord issued a notice to enter the property for 30 April 2020 (**Exhibit L # 1**) for the purpose of completing an inspection related to the notice of repairs. The landlord testified that he brought along a witness (his wife) but the witness was refused entry. The landlord testified that the repairs requested were not completed and as such he issued two termination notices as follows:
 - a. Termination Notice (Section 22) dated 30 April 2020 for 06 May 2020 (**Exhibit L # 6**);
 - b. Termination Notice (Section 24) dated 30 April 2020 for 06 May 2020 (**Exhibit L # 7**).
22. The landlord provided a witness statement (**Exhibit L # 8**) for the condition of the property when inspected in January 2020. Further, he presented a statement of what he witnessed (**Exhibit L # 9**) during the 30 April 2020 inspection along with the pics from the January 2020 inspection (**Exhibit L # 3**), pictures from the 30 April inspection (**Exhibit L # 4**), and pictures taken in May 2020 (**Exhibit L # 5**).
23. Lastly, the landlord made the statement that they can't remember ever seeing the tenant place garbage to the curb for the weekly pick-up.
24. The landlord is seeking vacant possession of the property (1 Adult).

Tenant Position

25. The tenant testified that the picture that the landlord presented do reflect the condition of his rental unit. The tenant added that he has the condition known as Post Traumatic Stress Disorder (PTSD) and his tools are his therapeutic outlet. He testified that he is relaxed when using his tools. The tenant did not provide any verification of his condition.
26. The tenant testified that if you were to go to his property today, that you would still find his tools laid out in the kitchen and room as in the landlords' photos. He stated that he can't remove them as he does not have a shed to place them in out of the weather.
27. The tenant testified that don't grow marijuana in the rented premises nor do he smoke it in the unit. He further testified that he has not had any marijuana in the property since the landlord complained about it in January 2020.
28. The tenant testified that with regard to the refusing the witness entry to the premises, he stated that the only person named on the Notice to Enter was [REDACTED]. The tenant testified that he was advised by local authorities not to have any person in excess of what is required and allowed for under the Covid-19 regulations and orders.

Analysis

29. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 22 & 24 and 34 as well as the service requirements identified in section 35.
30. Section 24 requires that where tenant contravenes statutory condition 7(a) as set out in subsection 10(1), the landlord may 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.
31. Section 22 requires that where tenant contravenes statutory condition 2 as set out in subsection 10(1), the landlord can give the tenant notice requiring the tenant to comply with the condition. Within three days of issuing the notice to comply or within a reasonable time, the landlord may 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.
32. The issue then for this tribunal is to determine if the tenant in this matter either breached statutory condition 7(a) or 2 of section 10(1) of the *Residential Tenancies Act, 2018* which reads:

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

2. Obligation of the Tenant - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

7. Peaceful Enjoyment and Reasonable Privacy -

(a) The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.

33. On examination of the termination notices issued and submitted into evidence (**Exhibit L # 6 and 7**), I find the notices were served on 30 April 2020 with a termination date of 06 May 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 technical compliance with the requirements of section 22 (3) and 24 (2) which identify the technical requirements of the termination notice. On examination of the termination notice, I find that all these criteria have been met.

34. The section 24 notice (Exhibit L # 7) that has been issued requires that the applicant show on the balance of probabilities that there was just cause for the issuance of this short notice. The landlord has stated that his witness to an inspection was refused entry and this constitutes an interference with the landlord's peaceful enjoyment of the property. He is correct in this statement under normal circumstances. He added that there are people coming and going from the unit all the time. It is common knowledge of the ongoing Global Pandemic and the restrictive measure implemented by the Provincial Government as it relates to social distancing and public interactions. The landlord would be reasonably expected to comply with these guidelines. The tenant is correct in saying that [REDACTED] is the only person identified on the Notice to Enter. This in conjunction with the rules around social distancing, I find that the tenant made a reasonable decision to limit the entry to his rented premises. There was no evidence to suggest that there have been people coming and going from the unit.
35. This being to only issue of interference with peaceful enjoyment, I find that the landlord has failed to establish and support that there was any sort of interference with peaceful enjoyment and as such the termination notice issued under section 24 is determined to be not valid and have no effect in law.
36. The section 22 notice that has been issued requires that the applicant show on the balance of probabilities that there was just cause for the issuance of this short notice.
37. This section of notice being issued is related to the cleanliness of the property and to repair any willful damages created by the tenant or a guest of the tenant. The factual evidence is clear related to this issue. The evidence is such that the tenant has acknowledged that the condition of the rented premises in question is reflective of the photos submitted by the landlord.
38. The photos do indeed depict an extremely messy apartment with tools and various items placed throughout the property in areas you would certainly not normally find them. It is certainly not characteristic to see a remote controlled helicopter on the top of a stove, or a sewing machine on the kitchen countertop amidst mugs, jars and coffee cups.
39. It is clear from the evidence and the acknowledgement of the tenant that the property was in a condition that was not clean, organized or perhaps livable. It is clear that the tenant has not lived up to or met his obligations as it relates to maintaining cleanliness of the rental property. However, the tenant is entitled to proper notice as dictated by the *Residential Tenancies Act, 2018*.

40. Section 22 is very specific as it relates to the issuance of a notice under this section. Section 22 reads:

Notice where tenant's obligation not met

22. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 2 set out in subsection 10(1), the landlord may give the tenant notice requiring the tenant to comply with the condition.

(2) Where a tenant contravenes statutory condition 2 set out in subsection 10(1) **within 3 days after the notice under subsection (1) has been served or within a reasonable time**, the landlord may 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.

(3) 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.

41. As can be seen in the highlighted section above, it states that within three days **after** a notice under subsection 1 has been provided (the notice to comply), the notice to terminate the rental agreement can be issued. It is clear that the landlord provided only 2 days to comply, which in and of itself is not enough time to clean the property. I do note here that there was an inspection in January 2020, however, there was no formal notice to comply with the Statutory Conditions and thus cannot be formally considered as adequate legal and proper notice. The landlord terminated the tenancy without giving the proper notice to comply and in doing so has failed to follow the guidelines of section 22 as set out.
42. As such, the landlords notice under section 22 of the *Residential Tenancies Act, 2018* is hereby determined to be not valid and of no effect in law.

section 24 (2) and 22 (3)

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.*

43. 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.

Decision

44. The landlord's claim for vacant possession fails.

Issue 3: Hearing Expenses

Landlord Position

45. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (██████) (**Exhibit L # 11**). The landlord paid a fee to Canada Post (**Exhibit L # 12**) for the service of documents in the amount of \$26.88. The landlord paid a fee for a Justice of the Peace Stamp (**no receipt provided**) in the amount of \$20.00. The landlord is seeking these costs.

Analysis

46. I have reviewed the testimony and evidence of the landlord 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 failed, I find the landlord is responsible to cover these reasonable expenses.

Decision

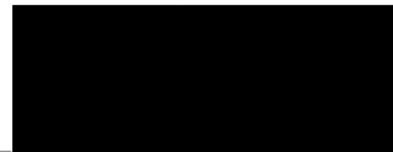
47. The landlord shall cover their own hearing expenses.

Summary of Decision

48. The landlord's claim for vacant possession and hearing expenses fails.

03 June 2020

Date



Michael Greene
Residential Tenancies Tribunal