

Residential Tenancies Tribunal

Decision 20-0028-04

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **2:00 pm** on **17 November 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] ([REDACTED]), hereafter referred to as the landlord, participated in the hearing. – **Affirmed**.
3. The respondent, [REDACTED] ([REDACTED]), hereafter referred to as the tenant, did not participate in the hearing. – **Absent and Not Represented**
4. The details of the claim were presented as a verbal weekly rental agreement with the tenant providing the landlord with cigarettes on a weekly basis. There was no security deposit collected on the tenancy. The landlord issued a termination notice dated 29 October 2020 for the intended termination date of 08 November 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. The tenant, [REDACTED], was not present or represented at the hearing. The Tribunal's policies concerning notice requirements and hearing attendance has been adopted from the *Rules of the Supreme Court, 1986*.
 - a. Rule 29.05(2)(a) states *a respondent to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date* and, and where the respondent fails to attend the hearing, Rule 29.11(1) states *that the hearing may proceed in the respondent's absence so long as he/she has been properly served*.

The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **05 November 2020** by serving the original documents to the tenant personally at the rented premises.

The tenant has had **11 days** to provide a response.

A phone call was placed to the tenant's listed number [REDACTED]. A message was left for the tenant on the Message Manager attached to the number.

Issues before the Tribunal

7. The landlord is seeking the following:
 - a) Vacant possession of the rented premises (Sec 24)
 - b) Hearing expenses

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
9. 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: Vacant Possession of the Rented Premises

Landlord Position

10. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
11. The landlord testified that he is looking to have his property returned as per Section 24 the *Residential Tenancies Act, 2018*.
12. The landlord testified that the tenant was only supposed to stay at the property for a short period. The landlord testified that the arrangement between the parties was based on a weekly agreement where the tenant was to provide cigarettes to the landlord in lieu of rent. The landlord testified that the tenant became very violent and the relationship became toxic to the point of physical assaults.
13. The landlord went on to testify that he did not file any criminal charges as he feared retaliation from the tenant and still had to live in the home with him. The landlord did file for a peace bond against the tenant but failed to appear at the hearing because of the retaliation he would face. He stated that he is currently living away from his home out of fear for his safety. The landlord suffers from PTSD and indicated that this situation has exacerbated the situation and the effects of the PTSD on his life.
14. The landlord testified that he is currently off work because of his mental condition and the stress that is ongoing. He was represented by the union representative ([REDACTED]) who spoke of the situation [REDACTED] has found himself in and how that has affected his job and career.
15. The landlord submitted into evidence a copy of the termination notice (**Exhibit L # 1**) which he stated was served to the tenant by the Process Server in the area.

Analysis

16. 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.
17. Section 24 requires that when a premises is rented, 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 # 1**), I find the notice was served on 29 October 2020 with a termination date of 05 November 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 24.

18. 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.
19. 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 under the legislation.
20. In reviewing the supportive evidence of the landlord, I note that there is not an abundance of documents presented. In most of these cases, the evidence is perhaps mostly witness and self-statements to support minimal documents.
21. The landlord's testimony is in and of itself valid evidence which speaks to the situations centered on what is happening in the rented premises. There is no doubt that this is a very strange arrangement as rental arrangements go, however, the payment of cigarettes is permitted as a form of payment in something other than money.
22. The landlord speaks of living conditions filled with fear and self-preservation. Enduring these conditions by someone who is not suffering from a mental disorder is and would be challenging. Enduring these conditions while dealing with PTSD would be a challenging situation at best and perhaps is closer to the unattainable realm.
23. Every person has the right of peaceful enjoyment and reasonable privacy and one tenant shall not infringe upon the landlord's rights in this regard. It is clear that the tenant in this matter does not hold any regard for the rights of the landlord in the property and seems to do what he wants, when he wants, without care or regard for others. With respect to the testimony of the landlord in this matter, I accept the facts presented by the landlord as legitimate, credible and genuine. I accept these facts as they were presented clearly, concisely and consistently which would be a challenge for a person suffering with PTSD. As such, I find that the landlord has supported the issuance of a short notice making it valid and effective in law.
24. As identified above, the landlord testified that the termination notice was served personally to the tenant at the rented premises which is permitted method of service identified under Section 35.
25. According to the reasons identified above, I find that the termination notice issued by the landlord to be valid and effective in law. Therefore, the landlord's claim for vacant possession is successful.

Decision

26. 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.

Issue 3: Hearing Expenses

Landlord Position

27. 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 # 2**). The landlord paid a fee in the amount of \$50.00 for the service of documents (**Exhibit L # 3**). The landlord is seeking these costs.

Analysis

28. 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 been successful, I find the tenant is responsible to cover these reasonable expenses.

Decision

29. The landlord's claim for hearing expenses succeeds in the amount of \$70.00.

Summary of Decision

30. The landlord is entitled to the following:
- a. An order of Vacant Possession
 - b. Costs associated with the enforcement of the Possession Order by the High Sheriff of NL.
 - c. An Order for Hearing Expenses in the amount of \$70.00

20 November 2020

Date


Michael Greene
Residential Tenancies Tribunal