

Residential Tenancies Tribunal

Decision 20-0038-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:45 am** on **23 July 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 – **Affirmed**.
3. The respondent, [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 written fixed term rental agreement with rent set at \$850.00 per month and due on the 1st of each month and set to expire on 30 April 2021. There was a security deposit in the amount of \$400.00 collected on the tenancy on or about 22 May 2020. The landlord issued two termination notices:
 - a. The first dated 21 June 2020 for the intended termination date 29 June 2020 under section 22 of the *Residential Tenancies Act, 2018*;
 - b. The second dated 29 June 2020 for the intended termination date of 31 July 2020 under Section 20 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 **10 July 2020** by serving the application for dispute resolution document to the tenants email: [REDACTED] and attaching a copy of the email along with the rental agreement which indicates the tenant's email address.

The tenant has had **12 days** to provide a response.

A phone call was placed to the tenant's phone number [REDACTED]. The message manager was full and no message was left.

As the tenant was properly served in accordance with the *Residential Tenancies Act, 2018*, with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded with the hearing.

Issues before the Tribunal

7. The landlord is seeking the following:
 - a) Vacant possession of the rented premises (Sec 20/22)

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 20, 22, 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 they are looking to have their property returned as per Section 20/22 the *Residential Tenancies Act, 2018*.
12. The landlord testified that the rental agreement is a fixed term tenancy (**Exhibit L # 5**). The landlord further testified that a number of notice to terminates were issued:
 - a. The first dated 21 June 2020 for the intended termination date 28 June 2020 under section 22 of the *Residential Tenancies Act, 2018*; (**Exhibit L # 4**)
 - b. The second dated 29 June 2020 for the intended termination date of 31 July 2020 under Section 20 of the *Residential Tenancies Act, 2018*. (**Exhibit L # 6**)
 - c. The third dated 29 June 2020 for the intended termination date of 05 July 2020 under Section 22 of the *Residential Tenancies Act, 2018*. (**Exhibit L # 7**).
13. The landlord testified that as of the hearing date (23 July 2020), the tenant remained in the unit.
14. The landlord testified that the tenant had moved her belongings into a private room belonging to the landlord which was not included in the rental agreement (**Exhibit L # 5**). The landlord testified that she on numerous occasions asked the tenant to remove her belongings.
15. The landlord also noted that the tenant had damaged the thermostat and the bathroom towel rack in the apartment. The landlord indicated that the tenant said she would fix the issue but failed to do so.
16. As a result of the above, the landlord testified she issued a notice to effect repairs (**Exhibit L # 1**) on 03 June 2020 to be completed by 07 June 2020. The landlord further testified that on 08 June 2020 she issued a notice to enter the property (**Exhibit L # 2**) on 09 June for the purpose of inspection.
17. The landlord noted during this inspection that the items requested to be repaired (thermostat and towel rack) were not repaired and submitted photos of the inspection (**Exhibit L # 3**).

18. The landlord issued a termination notice on 21 June 2020 to terminate the tenancy on 28 June 2020 under section 22 (**Exhibit L # 4**) as a result of the failure to complete the repairs.
19. The landlord further testified that during the inspection she also noted that the tenant had been smoking in the unit and referred to the inspection photos (**Exhibit L # 3**) to demonstrate this.
20. The landlord was under the impression that she also had to issue a termination notice for this as well and proceeded to issue a section 20 termination notice on 29 June 2020 to terminate the tenancy on 31 July 2020 (**Exhibit L # 6**). In addition the landlord issued another section 22 notice on 29 June 2020 for the intended date of 05 July 2020 (**Exhibit L # 7**).
21. The landlord is seeking an order of vacant possession for the property.

Analysis

22. The validity of the termination notice is determined by its compliance with the notice requirements identified in Sections 20, 22 and 34 as well as the service requirements identified in Section 35.
23. Section 20 requires that when a premises is rented for a fixed term, the landlord can give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises not less than 1 month before the end of the rental period where a tenant contravenes a material term of the rental agreement.
24. Section 22 requires that when a premises is rented for a fixed term, 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 where a tenant contravenes statutory condition 2 in subsection 10(1) of the *Residential Tenancies Act, 2018*
25. On review of the evidence, I note that the landlord issued a second notice under section 22 (**Exhibit # 7**) on the 29 June 2020 for the intended termination date of 05 July 2020. This notice when issued, likely created some confusion for the tenant given the initial issuance had the termination date of 28 June 2020. In issuing the second notice, I find that the landlord voided the first issue (**Exhibit L # 4**) and the new termination date would be 05 July 2020.

26. On the same day the landlord issued **Exhibit # 7**, there was an additional notice issued under section 20 of the *Residential Tenancies Act, 2018*. This notice placed the termination date out even further to 31 July 2020. There can be only one termination date for the one tenancy. The landlord has confused the issue on the date of termination by issuing the competing termination notices.
27. I will address the validity of the notice identified as **Exhibit L # 7** first. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 7**), I find the notice was served on 29 June 2020 with a termination date of 31 July 2020. I find that as the date of termination identified on the notice is not less than 1 month before the end of the rental period and the date the tenant is required to move out, the termination notice is in full compliance with the requirements of Section 20.
28. The landlords inspection on 09 June 2020 determined readily that the tenant was not only smoking in the rented premises, it was quite clear that there was illicit drug use happening and the use of cannabis which I note was not contained in a legalized container. The evidence presented is enough to show beyond the balance of probabilities that the tenant was in violation of her rental agreement (**Exhibit L # 5**) and in particular part 11 of this agreement. As such, I find the notice issued on 29 June 2020 for the termination date of 31 July 2020 under section 20 to be valid.
29. Further discussions of the issuance of the second notice on 29 June 2020 under section 22 will extend only to the merit of the landlord to issue such a notice. The tenant was served a notice to effect repairs (remove items from a personal room and repair a thermostat and towel rack). Evidence is such that the tenant failed to adhere to the reasonable request of the landlord. The landlord issued a corresponding notice to terminate, which if issued on its own would have been valid, but in the presence of another notice extending the termination date, I will go with the longer date of termination.
30. Sections 20(4) 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.

Section 20(4)

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 the rental period;*
- (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.*

31. The section 20 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 provided the evidence required to determine the validity of the notice.
32. The landlord testified that the termination notice was served by email which is a permitted method of service identified under Section 35.
33. According to the reasons identified above, I find that the termination notice issued by the landlord under section 20 to be valid and effective in law. Therefore, the landlord's claim for vacant possession is successful for the specified date of 31 July 2020.

Decision

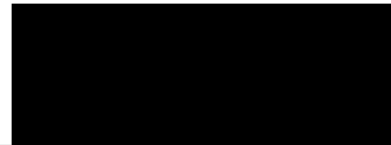
34. The landlord's claim for vacant possession succeeds for the specified date of 31 July 2020. The landlord is further awarded costs associated with the enforcement of the Possession Order by the High Sheriff of NL.

Summary of Decision

35. 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.

28 July 2020

Date



Michael Greene
Residential Tenancies Tribunal