

Residential Tenancies Tribunal

Decision 20-0049-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:20 pm on 18 February 2020 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. The tenants, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants”, did not participate.

Issues before the Tribunal

3. The landlord is seeking an order for vacant possession of the rented premises and an order for a payment of rent in the amount of \$750.00.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 10 and 24 of the *Residential Tenancies Act, 2018* and rule 29 of the Rules of the Supreme Court, 1986.

Preliminary Matters

6. The tenants were not present or represented at the hearing and I was unable to reach them by telephone from the hearing room. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the

hearing 10 clear days prior to the hearing date and, where the respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served. The landlord submitted an affidavit with his application stating that the tenants had been served by text-message on 04 February 2020 and he submitted copies of those messages at the hearing. The tenants have had 13 days to provide a response. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issue 1: Rent - \$750.00

Relevant Submissions

7. The landlord stated that he had entered into a monthly rental agreement with the tenants about 5 or 6 years ago. The current rent is set at \$750.00 and is due on the 21st day of each month.
8. The landlord testified that the tenants had not paid their rent for the period running from 21 January to 20 February 2020 and he is seeking an order for a payment of \$750.00 for that period.
9. The landlord also stated that he suspects that he won't receive the rent on 21 February 2020, either, and he figures that by the time the tenants do move out he will be owed 2 months' rent.

Analysis

10. I accept the testimony of the landlord in this matter and find that the tenants have not paid their rent for the period ending 20 February 2020. As such, the landlord's claim succeeds.

Decision

11. The landlord's claim for a payment of rent succeeds in the amount of \$750.00.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

12. The tenants live in an apartment adjacent to the landlord and the landlord stated that he shares a driveway with the tenants. Since they had moved in he has made arrangements to have the driveway cleared of snow by a plow so neither he nor his tenants would need to shovel.

13. The landlord complained that for the past 2 years the tenants have been refusing to move their car when the plow arrived to clear the driveway of snow and he claimed that they have been generally disagreeable.
14. The landlord also complained that [REDACTED] had been physically threatening him and he has since put a deadbolt on his door fearing that he would try to enter his unit. He claimed that he has had to call the police as a result of that matter.
15. Because of these issues, the landlord testified that he issued the tenants a termination notice and a copy of that notice was submitted with his application ([REDACTED] #1). That notice was issued under section 24 of the *Residential Tenancies Act, 2018* (notice where tenant contravenes peaceful enjoyment and reasonable privacy).
16. Although the notice is dated 27 January 2020, the landlord testified that he posted it to the tenants' door on either 28 January or 29 January 2020. That notice had an effective termination date of 02 February 2020.
17. The landlord stated that the tenants have not vacated as required and he is seeking an order for vacant possession of the rented premises.

Analysis

18. Statutory condition 7.(a), set out in section 10.(1) of the *Residential Tenancies Act, 2018* states:

Statutory conditions

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:

...

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.

and according to section 24 of this Act:

Notice where tenant contravenes peaceful enjoyment and reasonable privacy

24. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 7(a) 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.

(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.

19. I accept the landlord's testimony concerning the behaviour of his tenants. According to that testimony, over the past couple of years they have become uncooperative and [REDACTED], in particular, has been acting in a threatening and anti-social manner.
20. I agree with the landlord that that sort of behaviour is unreasonable and it is evident that it is interfering with his quiet and peaceful enjoyment. As such, I find that he was in a position, in January 2020, to issue the tenants a termination notice under this section of the *Act*.
21. However, the notice issued by the landlord is not valid. Section 24.(1) states that a notice under this section of the *Act* must specify a termination date which is "not less than 5 days after the notice has been served." As the words "not less than" are used here, these 5 days must be "clear days" meaning that there have to be 5 days between the day the notice was issued and the day the tenant is required to vacate.
22. As the notice states that the tenants are required to vacate the property on 02 February 2020, that notice had to have been served on the tenants sometime prior to 28 January 2020. Had the notice been issued on the day it is dated, 27 January 2020, it would have been valid. However, as it was served on either 28 January or 29 January 2020, it does not meet the timeframe requirements set out in this section of the *Act* and is therefore not a valid notice.

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23. The termination notice issued to the tenants on 28 January or 29 January 2020 is not a valid notice.

24. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

Issue 3: Hearing Expenses

25. The landlord paid a fee of \$20.00 to file this application. As the landlord's claim has been partly successful, the tenants shall pay that hearing expense.

Summary of Decision

26. The landlord is entitled to the following:

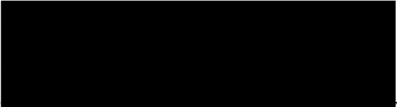
- a) Rent Owing\$750.00
- b) Hearing Expenses.....\$20.00

- c) Total Owing to Landlord\$770.00

27. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

26 February 2020

Date



John R. Cook
Residential Tenancies Tribunal