

Residential Tenancies Tribunal

Decision 20-0065-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 1:30 pm on 01 December 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 verbal monthly rental agreement commencing on 08 January 2020 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 \$200.00 collected on the tenancy. The landlord issued a termination notice dated 02 November 2020 for the intended termination date of 09 November 2020 under Section 22 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 **16 November 2020** by serving the documents to the tenant personally at the rented premises.

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

There was no contact information on file to contact the tenant.

7. As the tenant was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded in the tenant's absence.

Issues before the Tribunal

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

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
10. Also relevant and considered in this case are Sections 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

11. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
12. The landlord testified that she is looking to have her property returned as per section 22 the *Residential Tenancies Act, 2018*.
13. The landlord testified that the rental agreement is a verbal monthly rental agreement with rent set at \$600.00 per month exclusive of utilities. The landlord further testified that a notice to terminate was issued on 02 November 2020 under Section 22 of *the Act* (**Exhibit L # 1**) to terminate the tenancy on 09 November 2020. The landlord testified that the notice to terminate was served by posting it to the main door of the property. The landlord indicated that as of the hearing date (01 December 2020), the tenant remained in the unit. There is 1 adult living in the unit.
14. The landlord testified that the property was a duplex property with a senior living adjacent to the respondent. She further indicated that she received complaints from the seniors son's concerning garbage being left around by the respondent.
15. The landlord testified that she posted a notice to enter the property for an inspection (**not submitted into evidence**). During an inspection of the property the landlord noted that the property was filthy and had taken some photos of the condition. The landlord claims that the property was not being looked after.
16. It is noted here that the landlord indicated that she has not submitted the photos to the respondent and had just submitted a couple of pictures to the tribunal for evidence, 10 minutes before the hearing was to start. It is further noted that the landlord submitted several photos electronically after the hearing had ended which are not considered in this decision.
17. The landlord further testified that she is seeking possession of the property so she can clean up the unit.

Analysis

18. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 22 and 34 as well as the service requirements identified in section 35.

19. 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.
20. The issue then for this tribunal is to determine if the tenant in this matter either breached statutory condition 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.

21. On examination of the termination notices issued and submitted into evidence (**Exhibit L # 1**), I find the notice was served on 02 November 2020 with a termination date of 09 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 technical compliance with the requirements of section 22 (3) which identify the technical requirements of the termination notice. On examination of the termination notice, I find that all these criteria have been met.
22. 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.
23. 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 landlord has failed to provide any clear and supported evidence at the hearing to support her version of events related to this claim.
24. The photos submitted by the landlord just prior to the hearing and hours after the hearing was adjourned are not considered here as they were not submitted to the other party in advance of the hearing as required in all teleconference files. The consideration of such evidence would be judicially unfair to the respondent and as such will not be considered.
25. There has been little evidence submitted in this claim. The tenant is entitled to proper notice as dictated by the *Residential Tenancies Act, 2018*.

26. 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.

27. 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. There is no indication that any such notice to comply was given to the tenant in this matter. I do note here that there was an inspection conducted by the landlord, however, there was no formal notice to comply with the Statutory Conditions (***none supplied as evidence***) 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.

28. 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.

29. Section 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.*

30. 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

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

Summary of Decision

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

03 December 2020

Date



Michael Greene
Residential Tenancies Tribunal