

Residential Tenancies Tribunal

Decision 20-0183-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 1:30 pm on 14 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 the landlord, participated in the hearing. (*Affirmed*).
3. The respondent, [REDACTED], hereafter referred to as the tenant, participated in the hearing. (*Affirmed*).
4. The details of the claim were presented as a written fixed term rental agreement commencing on 07 December 2019 and set to expire on 31 January 2021. Rent was set at \$950.00 per month and due on the 1st of each month. There was a security deposit in the amount of \$700.00 collected on the tenancy on or about 07 December 2019. The landlord issued two termination notices:
 - a. The first dated 10 February 2020 for the intended termination date of 31 March 2020 under Section 20/22 of the *Residential Tenancies Act, 2018*.
 - b. The second dated 07 May 2020 for 30 June 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 claim was amended at the onset to:
 - a. Confirm the name of the respondent to be [REDACTED]
 - b. To remove [REDACTED] as a respondent as he is a minor child (14 years old) of the respondent.
7. The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **28 April 2020** by serving the Application for Dispute Resolution documents to the tenant personally at the rental address.

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 20, 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

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 their property returned as per section 20/22 and 24 the *Residential Tenancies Act, 2018*.

13. The landlord testified that the rental agreement is a written fixed term tenancy but did not provide a copy of the written rental agreement as evidence. The landlord further testified that a notice to terminate was issued on 10 February 2020 under Section 20/22 of *the Act* (**Exhibit L # 1**) to terminate the tenancy on 31 March 2020. The landlord testified that the notice to terminate was served personally by the landlord to the tenant on or about 10 February 2020. The landlord additionally testified that on the termination date (31 March 2020) she withdrew the notice and advised the tenant she could stay. The landlord further testified that she issued a second notice to terminate the tenancy on 07 May 2020 to terminate the tenancy on 30 June 2020. A copy of this notice to terminate was not presented into evidence or attached to the initial claim documents.
14. The landlord testified that there were several reasons to terminate the tenancy. The first is that the tenant had permission to have one cat in the property and moved into the unit with three cats.
15. The landlord additionally testified that the tenant is a hoarder and the property is messy and very unclean.
16. The landlord also testified that the tenant moved her older son and his girlfriend into the property and stated that the extra people means an added strain on the electrical consumption given that utilities are included in the rent.
17. The landlord indicated that she has received many complaints from the adjoining tenants about the extra tenants (ie: drug use, having sex in the back yard in plain view and loud music).
18. The landlord indicated that as of the hearing date (14 May 2020), the tenant remained in the unit. There are as many as 3 adults and 1 minor child (14 years) living in the unit. The landlord is seeking vacant possession of the property.

Tenant Position

19. The tenant testified that she received the notice to terminate the tenancy (**Exhibit L # 1**) but the landlord said she could stay.
20. The tenant testified that she is not a hoarder and only has some extra furniture around because of her downsizing. She further claims that her son and girlfriend are not there permanently, but come to visit.

Analysis

21. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 20, 22, 24 and 34 as well as the service requirements identified in section 35.
22. The issue on the technical aspects of the notice in this matter are insignificant as the only piece of evidence that the landlord has presented (the termination notice issued under section 20 and 22 of the Act), was rescinded by the landlord and as such rendered it void and of no effect in law given both parties were agreeable to the action.
23. The landlord failed to support any of her claims of breaches of the agreement of the Act. She failed to provide any supporting evidence. Any discussion on the technicalities of the notices becomes a non-issue.
24. The section 20/22 notice that has been issued requires that the applicant show on the balance of probabilities that there was just cause for the issuance of a short notice. The landlord has provided no supporting evidence.
25. 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

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

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 is seeking this cost.

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 failed, I find the landlord is responsible to cover these reasonable expenses.

Decision

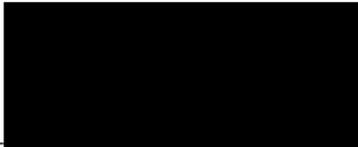
29. The landlord shall cover their own hearing expenses.

Summary of Decision

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

29 May 2020

Date



Michael Greene
Residential Tenancies Tribunal