

Residential Tenancies Tribunal

[REDACTED] Decision 20-0256-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am** on **27 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 tenant1, participated in the hearing – ***Affirmed.***
3. The applicant, [REDACTED], hereafter referred to as the tenant2, participated in the hearing – ***Affirmed.***
4. The respondent, [REDACTED], hereafter referred to as landlord1, participated in the hearing – ***Affirmed.***
5. The respondent, [REDACTED], hereafter referred to as landlord2, participated in the hearing – ***Affirmed.***
6. The details of the claim were presented as a written monthly rental agreement with rent set at \$1500.00 per month and due on the 1st of each month. There was a security deposit in the amount of \$1125.00 collected on the tenancy on or about 22 February 2020. The landlord issued a termination notice dated 21 May 2020 for the intended termination date of 31 August 2020 under Section 18 of the *Residential Tenancies Act, 2018*.
7. 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

8. The affidavit submitted by the tenants shows that landlord1 and 2 were served with the notice of this hearing on the **15 July 2020** by serving the application for dispute resolution document electronically to the landlords at the email address: [REDACTED] with a copy of the sent email attached.

The landlords had **11 days** to provide a response.

9. The tenants did not claim any hearing expenses.

Issues before the Tribunal

10. The tenants are seeking the following:
 - a) Validity of Termination Notice
 - b) Request for Repairs with rent paid in trust

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
12. Also relevant and considered in this case are Sections 18, 34 and 35 of *the Act*; and Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Validity of a Termination Notice/Request for Repairs/Rent Paid In trust

Tenant Position

13. The tenants disputes the notice of termination issued by the landlords (**Exhibit T# 1**) stating that they feel it was issued in retaliation to their informal request for repairs.
14. The tenants' testified that from the beginning of the tenancy they have been texting and messaging the landlords to complete some repairs required at the property. The tenants stated that it started with low water pressure and other things got added. The list of items presented to the landlords were:
 - a. Low Water Pressure
 - b. Repair the leak in the basement
 - c. Heating System

- d. Rodents in the basement
- e. Repair the fence

15. The tenants did not submit any copies of the text messages to the landlords. The tenants completed a formal request for repairs (**Exhibit T # 2**) on 26 May 2020 to be completed by 09 June 2020.
16. The tenants testified that this formal notice of repairs was never served on the landlords and was only sent to the Residential Tenancies Division of Service NL.
17. The tenants were concerned about the low water pressure as it made it difficult to shower, etc. With regard to the heating system, they indicated that the heat would not turn off and indicated a possible issue with the thermostat. They were concerned about the basement leak & rodent problem as tenant2 has expensive camera equipment and electronics stored in the basement. Lastly they testified that they have a dog and the destroyed fence poses problems for the dog's ability to run free. Tenant1 stated that they rented the property because the fence was to be replaced.
18. There was no photos of the areas of concern presented into evidence.

Landlord Position

19. The landlords testified that the majority of what the tenants have stated is accurate. The landlords testified that they did have text conversations with the tenants concerning some issues. The landlords testified that as soon as an item was raised by the tenants, it was immediately addressed or the process of addressing the issue was started.
20. The landlords stated that the low water pressure was the result of a water main break. At first it was unclear what it was, but a plumber was dispatched to determine what it was from inside the house. After the city was engaged to dig up the street, they only then found out that the break was actually on the home owner's property. The landlords then testified that a contractor was secured to dig up the waterline and make the repairs.
21. The landlords testified that this process all took place in the height of the Covid-19 pandemic restrictions when businesses were closed, services were reduced, etc. The repair was completed on 17 June 2020.
22. The landlords next indicated that regarding the leak, this issue arose from the water main break and the repair of the waterline also corrected the leak.
23. Regarding the rodent issue, the landlords testified that they contacted PCO immediately who attended the property the next day and are now on a monthly return schedule to address any issues that may arise.

24. The landlords testified that the heating system has been attempted to be rectified since the tenants first raised the concern. A contractor was engaged and attended the property only to be turned away by the tenants because they didn't have time to deal with the contractor. The landlords further testified that several attempts have been made to arrange a suitable schedule between the tenants and North Atlantic. The landlords advised that as the scheduling concerns went on for so long, North Atlantic simply closed the file. Finally the landlords advise that the tenants have agreed to make the arrangements with North Atlantic themselves on their schedule.
25. Lastly, the issue on the fence, poses the similar problems as a result of Covid-19 as stated above. The fence blew down during the winter storms on the Avalon Peninsula during the winter 2020. It could not be replaced during the winter and early spring Covid-19 restrictions were put in place again delaying the projects. The landlords stated that with the recent easing of restrictions, everyone is looking to hire contractors and there are simply none to be hired at a price that's not 3-4 times the norm, which delays the project again.
26. The landlords stated that they have addressed or attempted to address each and every concern of the tenants.
27. Regarding the notice to terminate, the landlords advise that they plan on moving back into the property in the fall and simply provided the required notice to obtain the property back. They further testified that they have never seen the Notice for Repairs only when a copy was served as an attachment with the Application for Dispute Resolution.
28. The landlords are seeking possession of their property at the end of the termination notice.

Analysis

29. The validity of the termination notice is determined by its compliance with the notice requirements identified in Sections 18 and 34 as well as the service requirements identified in Section 35.
30. Section 18 requires that when a premises is rented for a monthly tenancy, the landlords can give the tenants notice that the rental agreement is terminated and the tenant are to vacate the residential premises not less than 3 months before the end of a rental period.

31. Section 34 requires the following:

Requirements for notices

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.*

32. On examination of the termination notice issued by the landlords and submitted into evidence by the tenants (**Exhibit T # 1**), I find the notice meets all the requirements of both section 18 and 34 of the *Residential Tenancies Act, 2018*.
33. Additionally, the landlords issued their termination notice on 21 May 2020. The tenants didn't complete their Request for Repairs until 26 May 2020 and the evidence is such that they failed to serve the document on the landlords.
34. Further to the items in question on this notice that was never served, evidence is such that a reasonable effort has been made by the landlords to ensure the items of concern were addressed through an informal process and in fact have addressed all but 1 (the fence) and that is subject to availability of contractors.
35. I find that the tenants' request for repairs/rent paid in trust does not succeed as it was never served on the landlords as required by the Residential Tenancies Act, 2018 and secondly, the landlords have reasonably attempted to correct the issues through an informal process.
36. On examination of the termination notice, I find that the notice was issued in accordance with the Residential Tenancies Act, 2018 and there is no indication of it being done in retaliation thereby making the notice valid and effective in law.

Decision

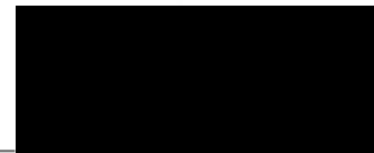
37. The Termination Notice issued by the landlords is determined valid and effective in law.

Summary of Decision

38. The Termination Notice issued by the landlords is determined valid and effective in law.

31 July 2020

Date



Michael Greene
Residential Tenancies Tribunal