

## Residential Tenancies Tribunal

Decision 20-0299-05

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at **10:30 am** on **10 August 2020** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as landlord ([REDACTED]), participated in the hearing. (*Affirmed*)
3. The applicant, [REDACTED], hereafter referred to as landlord ([REDACTED]), participated in the hearing. (*Affirmed*)
4. The respondent, [REDACTED], hereafter referred to as tenant ([REDACTED]), did not participate in the hearing. (*Absent and Not Represented*)
5. The details of the claim were presented as a verbal monthly rental agreement with rent set at \$650.00 per month and due on the 2<sup>nd</sup> of each month. There was a security deposit in the amount of \$300.00 collected on the tenancy on or about 02 November 2019. The landlord issued a termination notice dated 14 July 2020 for the intended termination date of 25 July 2020 under Section 19 of the *Residential Tenancies Act, 2018*.
6. 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

7. 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 tenant was served with the notice of this hearing on the **25 July 2020** by serving the application for dispute resolution document personally to the tenant at the rental unit address.

The tenant has had **15 days** to provide a response.

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

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.

8. The landlords amended the claim at the onset to reflect the legal name of ([REDACTED]) to be [REDACTED].

## Issues before the Tribunal

9. The landlords are seeking the following:
  - a) Vacant possession of the rented premises

## Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
11. Also relevant and considered in this case are Sections 19, 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

12. The landlords are seeking to recover possession of the rented premises located at [REDACTED].
13. The landlords testified that the tenant failed to make any rent payments for the month of June, July and August 2020 leaving an amount outstanding in the amount of \$1950.00 up to and including 31 August 2020.
14. The landlords testified that there are no records kept or receipts issued as the tenant never require them. The landlords testified that they have had the property for 20 years and never issued a receipt.
15. The landlords further testified that as a result of not receiving any rent, they issued a termination notice under section 19 of the *Residential Tenancies Act, 2018 (Exhibit L # 1)* to terminate the tenancy on 25 July 2020. The landlords testified that the notice to terminate was served personally by the landlords to the tenant on 14 July 2020. The landlords indicated that as of the hearing date (10 August 2020), the tenant remains in the unit and rent is outstanding. The landlords further testified that to the best of their knowledge, there are 2 adults living in the unit.

### **Analysis**

16. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 19 (4) and 34 as well as the service requirements identified in section 35.
17. The landlords have testified that it is a normal course of business to not maintain records nor issue receipts for the 20 plus years they have been renting the property. I have no reason to discredit the testimony of the landlords in this matter. Additionally, the tenant's failure to appear to defend the claim or file an application seeking the validity of the notice issued to him leads me to draw a conclusion that the claim of the landlords is accurate. As such, I accept the evidence of the landlords and find that the tenant does owe rent as described in paragraph 14 above.
18. Section 19 (1)(b) requires that when a premises is rented for month to month and the tenant's rent is overdue for 5 days or more, the landlord may terminate the tenancy and the tenants are required to vacate the residential premises on a date not less than 10 days after the notice has been served. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 1**), I find the notice was served on 14 July 2020 with a termination date of 25 July 2020. As established above, the tenant owes rent which is in contravention of *The Act* and

rental agreement between both parties. I further find that as the date of termination identified on the notice is at least 10 clear days between the date the notice was issued and the date the tenant is required to move out, the termination notice is in full compliance with the requirements of section 19 (1).

19. Sections 19 (4) and 34 identify the technical requirements of the termination notice as identified below. On examination of the termination notice, I find it all these criteria have been met.

*section 19 (4)*

*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.*

20. As identified above, the landlords testified that the termination notice was served personally which is a permitted method of service identified under section 35.
21. According to the reasons identified above, I find that the termination notice issued by the landlords to be proper and valid. Therefore, the landlords are entitled to an order for vacant possession of the property along with an order for any and all costs associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

## **Decision**

22. The landlords' claim for vacant possession succeeds. The landlords are further awarded costs associated with the enforcement of the Possession Order by the High Sheriff of NL.

## Issue 2: Hearing Expenses

### Landlord Position

23. The landlords 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 landlords are seeking this cost.

### **Analysis**

24. I have reviewed the testimony and evidence of the landlords in this matter. The expenses incurred by the landlords are 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*. As such, I find the tenant is responsible to cover these reasonable expenses.

### **Decision**

25. The tenant shall pay the reasonable expenses of the landlords in the amount of \$20.00.

### **Summary of Decision**

26. The landlords are entitled to the following:
- a) **Vacant Possession of the Rented Premises**
  - b) **Hearing Expenses in the amount of \$20.00**
  - c) **An order for any and all costs associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.**

13 August 2020

**Date**

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**Michael Greene**  
**Residential Tenancies Tribunal**