

Residential Tenancies Tribunal

Decision 20-0320-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am** on **24 November 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 landlord applicant, [REDACTED] ([REDACTED]), hereafter referred to as the landlord, participated in the hearing. – **Affirmed.**
3. The tenant respondent, [REDACTED] ([REDACTED]), hereafter referred to as the tenant, participated in the hearing – **Affirmed.**
4. 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

5. At the onset of the hearing a question of the validity of the claim was raised by the tenant. The following will deal with the issue raised and another noted by the tribunal.

Issues before the Tribunal

6. The tribunal is required to adjudicate on the validity of the filing of the claim before proceeding.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
8. Also relevant and considered in this case are Sections 42(1) of *the Act*,

Issue 1: Filing Validity

Position/Analysis

9. The tenant argued that she was not served with three months of the application being filed, contrary to the *Residential Tenancies Act, 2018*. The tenant further argued that the second tenant was not named on the application and should have been.
10. The landlord explained that the documents for service were not sent to her correct email and thus she was not able to serve the documents in time. Regarding the second tenant, the landlord argued that she did all her dealings with ■■■ and didn't think she had to name the second tenant.
11. The tribunal also noted an error in the processing of the application beyond one year of the tenancy terminating which affects the validity of the application.
12. An application to the director is guided by the legislation through Section 42(1) which reads:

Application to director

42. (1) A landlord or tenant may, within one year after termination of the rental agreement, apply to the director to determine

- (a) a question arising under this Act or the regulations;
- (b) whether a provision of a rental agreement has been contravened; or
- (c) whether a provision of this Act or the regulations has been contravened.

13. An application can be filed within one year of the tenancy terminating.
14. The application is not accepted at the office until the application is complete, all required documents are attached and the required fee paid. The tribunal referred to an email dated 14 July 2020 which indicates that the applicant's submission was not complete and there were documents missing so could not be processed. It is apparent that at this point, it was missed that the filing was outside the one year time frame as indicated above.

15. This tribunal, however, noted the indicated date on the application was 24 June 2020 which was close to the filing deadline and reviewed this fact for clarity. It was determined that the application was not submitted in its complete form before the one year had past and as such, the application should not have been accepted. I find that the application was improperly filed and therefore is dismissed.

Decision

16. **The claim is determined to be outside the filing time frames and therefore dismissed.**

26 November 2020

Date



Michael Greene
Residential Tenancies Tribunal