

Residential Tenancies Tribunal

Decision 20-0397-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **2:00 pm** on **24 Sept 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] ([REDACTED]), hereafter referred to as landlord1, participated in the hearing. – **Affirmed.**
3. The applicant, [REDACTED] ([REDACTED]), hereafter referred to as landlord2, participated in the hearing. – **Affirmed.**
4. The respondent, [REDACTED] ([REDACTED]), hereafter referred to as the tenant, participated in the hearing – **Affirmed.**
5. The details of the claim were presented as a verbal monthly rental agreement with rent set at \$1100.00 per month and due on the 1st of each month. There was a security deposit in the amount of \$237.00 collected on the tenancy on or about 31 January 2018. The landlords issued a termination notice dated 10 September 2020 for the intended termination date of 17 September 2020 under Section 24 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 affidavits submitted by the landlords show that the tenant was served with the notice of this hearing on the **10 Sept 2020** by serving the application for dispute resolution document personally to the tenant at the rental unit address.

The tenant has had **13 days** to provide a response.

Issues before the Tribunal

8. The landlords are seeking the following:
 - a) Vacant possession of the rented premises (Sec 24)
 - 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 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 landlords are seeking to recover possession of the rented premises located at [REDACTED].
12. The landlords testified that they are looking to have their property returned as per Section 24 the *Residential Tenancies Act, 2018*.
13. The landlords testified that the rental agreement is a verbal monthly tenancy. The landlords further testified that a notice to terminate was issued on 10 September 2020 under Section 24 of *the Act* (**Exhibit L # 2**) to terminate the tenancy on 17 September 2020. The landlords testified that the notice to terminate was served by both placing it in a conspicuous place on the rental property (Main Entrance) and by text to the number [REDACTED] on 10 Sept 2020. The landlords indicated that as of the hearing date (24 September 2020), the tenant remained in the unit. There is 1 adult living in the unit.

14. Landlord1 testified that the tenant has been interfering with the peaceful enjoyment of the landlords by blocking access to real estate agents who are attempting to sell the property. Further, landlord1 stated that he has also been intimidating both in and around the unit.
15. Landlord1 testified that for each and every viewing to sell the property, they provide a 24 hour notice to the tenant of the time of entry.
16. Landlord1 stated that there was one recent occasion where an agent was attempting entry to the unit for the purpose of showing the property and could not gain entry. Landlord1 stated that during this occasion, she was asked to assist and attempted to gain entry when a guest of the tenant opened the door and said that █████ said that “the viewing wasn’t going to happen today” and slammed the door in their face.
17. The landlords further added that there has been multiple occasions where agents have attempted entry but couldn’t get in as the doors were locked.
18. The landlords testified that during an inspection of the property, it was noted that there were needles and drug paraphernalia all over the apartment. During a second inspection, the landlords stated that a gun or an imitation gun was left in plain sight on the coffee table. The landlords stated that there was no threats made but it was certainly intimidating and they assumed it was real. The landlords submitted photos of the property (**Exhibit L # 1**) showing the needles and the gun.
19. Landlord1 referred to an incident involving a pit bull dog and friends of the tenant. She advised that the tenant acquired a dog without permission and at one point when a real estate agent attempted entry they were met with the pit bull dog and four friends of the tenant on the step. The agent did not approach the property as they were intimidated.
20. Landlord1 testified that the tenant and his friends are up in the property all hours in the night. The landlords did not call any witnesses to corroborate any of the instances of the noise.
21. Landlord1 testified that the tenant changed the locks on the property without permission. The landlords testified that they were provided with the entry code but this code was later changed by the tenant and thus entry was prohibited by the landlords.
22. Lastly, landlord2 testified that the tenant stole a ladder from a neighboring construction site and then used it to gain entry to his unit through a window. Landlord2 testified that the company representative saw the ladder up against the landlords’ property and came to retrieve the ladder.

Tenant Position

23. The tenant disputes the landlords' version of events. The tenant acknowledged changing the locks but indicated he provided the code to the landlords for entry. He indicated that there was an issue at one time because the batteries were low in the lock.
24. The tenant acknowledged taking the ladder and using it to gain entry to his unit because he locked himself out. Additionally, the tenant acknowledged taking in a dog without permission, but states that later was given permission by the landlords.
25. The tenant added that he was away from the property for a 2 month period and permitted a buddy of his to stay and use the property. He states that what the landlords are complaining about was the result of the person staying there and not him.
26. The tenant testified that he has been harassed by the landlords with multiple notices to the point that the paint is coming off the door from all the notices being posted.

Analysis

27. The validity of the termination notice is determined by its compliance with the notice requirements identified in Sections 24 and 34 as well as the service requirements identified in Section 35.
28. Section 24 requires that when a premises is rented, the landlords can 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. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 2**), I find the notice was served on 10 September 2020 with a termination date of 17 September 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 compliance with the requirements of Section 24.
29. Sections 24 (2) and 34 identify the technical requirements of the termination notice as identified below. On examination of the termination notice, I find that all these criteria have been met.
30. The Section 24 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 under the legislation.

31. In reviewing the supportive evidence of the landlords, I note that there are not an abundance of documents presented. In most of these cases, the evidence is perhaps mostly witness and self-statements to support minimal documents.
32. The way that I view this case is that the landlords have indicated the tenant interfered with their right to sell their investment (namely the property). The landlords did not call any of the real estate agents as witnesses to corroborate the events, however their testimony is valid. As we will see below, the landlords have described particular events and the tenant has acknowledged them. Based on this I have no reason to discredit the testimony of the landlords. In particular I reference the testimony of the landlord1 that both she and a real estate agent attended the property for entry and a guest of the tenant advised that it wasn't a good time to enter and slammed the door in their face.
33. This sort of behavior either by the tenant or a guest of the tenant is not acceptable and in fact does interfere with the right of the landlords to show and sell their property. Added to this, I find that the tenants obtaining a particularly aggressive dog breed (pit bull) without permission of the landlords could be seen as an intimidation tactic. I do not accept the testimony of the tenant that the landlords later gave permission to retain the animal in the property. The tenant's version of events simply does not make reasonable sense. I find that this dog was brought on the property for one reason only, that being to keep people away from the unit.
34. In addition, the placement of a gun, whether it be imitation of real, on the coffee table in advance of a viewing is nothing short of a pure intimidation tactic and in fact if the gun is real, may be criminal in nature. For the purpose of this decision I accept the landlord's version that the gun was placed in view as an indirect treat.
35. The landlords have demonstrated that there was a notion of interference with the peaceful enjoyment of a property by the tenant or someone who was permitted on the premises by the tenant. Every person has the right of peaceful enjoyment and reasonable privacy and one tenant shall not infringe upon the landlords' rights in this regard. It is clear that the tenant in this matter does not hold any regard for the rights of the landlords in the property and seems to do what he wants, when he wants, without care or regard for others. The evidence presented by the landlords supports their version of events and I accept this evidence and find the testimony to be credible. I find that the tenant has interfered with the

peaceful enjoyment and reasonable privacy of the landlord.

36. As identified above, the landlords testified that the termination notice was served by placing it in a conspicuous place on the rented premises and via text message which are permitted methods of service identified under Section 35.
37. According to the reasons identified above, I find that the termination notice issued by the landlords to be valid and effective in law. Therefore, the landlords' claim for vacant possession is successful.

section 24 (2)

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.*

Decision

38. The landlord's 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 3: Hearing Expenses

Landlord Position

39. 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 # 3**). The landlords are seeking this cost.

Analysis

40. 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* in the event the claim has been successful. As the landlords' claim has been successful, I find the tenant is responsible to cover these reasonable expenses.

Decision

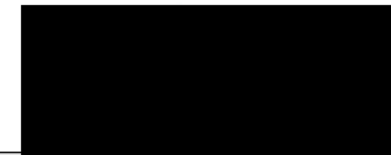
41. The landlords' claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

42. The landlords are entitled to the following:
- a. An order of Vacant Possession
 - b. Costs associated with the enforcement of the Possession Order by the High Sheriff of NL.
 - c. An Order for Hearing Expenses in the amount of \$20.00

28 September 2020

Date



Michael Greene
Residential Tenancies Tribunal