

Residential Tenancies Tribunal

Decision 20-0415-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am** on **08 October 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. The applicant was represented by [REDACTED] – **Affirmed**.
3. The respondent, [REDACTED], hereafter referred to as the tenant, did not participate in the hearing – **Affirmed**.
4. The details of the claim were presented as a written monthly rental agreement with rent set at \$845.00 per month and due on the 1st of each month. There was a security deposit in the amount of \$600.00 collected on the tenancy on or about 01 October 2018. The landlord issued a termination notice dated 11 September 2020 for the intended termination date of 17 September 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 tenant, [REDACTED], was served with the notice of the hearing on the **21 September 2020** by serving the application for dispute resolution document to the tenant personally. The tenant has had **16 days** to provide a response.
7. The landlord called the following witnesses:
 - a. [REDACTED] ([REDACTED]), Resident Manager – *Affirmed*

Issues before the Tribunal

8. The landlord is seeking the following:
 - a) Vacant possession of the rented premises (Section 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 landlord is seeking to recover possession of the rented premises located at [REDACTED]
12. The landlord testified that they are looking to have their property returned as per Section 24 the *Residential Tenancies Act, 2018*.
13. The landlord testified that the rental agreement is a written monthly tenancy with a notice to terminate was issued on 11 September 2020 under Section 24 of *the Act* (**Exhibit L # 1**) to terminate the tenancy on 17 September 2020. The landlord testified that the notice to terminate was served personally to the tenant on 11 September 2020. The landlord indicated that as of the hearing date (08 October 2020), the tenant remained in the unit. There is 1 adult living in the unit.

14. The landlord testified that there has been a number of complaints from other tenants concerning this tenant's conduct and behavior in the building. The landlord testified that a letter was sent to the tenant and the behavior continued.
15. The landlord referred to an incident where it is alleged that the tenant entered her apartment by using a hammer to beat the door set off.
16. The landlord also referred to an incident on or about 10 September 2020 where it is alleged that the tenant entered the apartment of another tenant without permission or being invited in. It is alleged that she removed the key from a wreath on the door and used it to gain entry.
17. The landlord called a witness [REDACTED] who is the resident manager of the building. [REDACTED] testified that she has been advised by other tenants of the behavior of the respondent in this matter. She testified that she did not see or witness the respondent enter the other tenants property, but was again advised by a third party.
18. The landlord testified that there were no tenants who were complaining called as a witness in this matter.

Analysis

19. 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.
20. Section 24 requires that when a premises is rented monthly, the landlord 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 # 1**), I find the notice was served on 11 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.
21. 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.
22. 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. The landlord has provided only the testimony of an employee of the company who was providing third party information regarding the happenings within the building. There was no first hand witnesses presented at the hearing to

establish there was just cause for issuing a short notice under the *Residential Tenancies Act, 2018*.

23. The landlord has failed to show cause for the issuance of the Section 24 Notice.

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.*

24. As identified above, the landlord testified that the termination notice was served personally which is a permitted method of service identified under Section 35.
25. According to the reasons identified above, I find that the termination notice issued by the landlord to be not valid nor effective in law. Therefore, the landlord's claim for vacant possession fails.

Decision

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

Summary of Decision

27. The landlord's claim for Vacant Possession fails

09 October 2020

Date



Michael Greene
Residential Tenancies Tribunal