

Residential Tenancies Tribunal

Decision 21-0069-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am** on **12 March 2021** 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 – **Absent and Not Represented.**
4. The details of the claim were presented as a written fixed term rental agreement set to expire on 31 October 2021, rent set at \$715.00 per month and due on the 1st of each month. There was a security deposit in the amount of \$536.25 collected on the tenancy on or about 12 November 2020. The landlord issued a termination notice dated 09 February 2021 for the intended termination date of 15 February 2021 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 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 affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **25 February 2021** by serving the original documents to the tenant personally at the rented premises.

A phone call was placed to the tenant's number on file [REDACTED] with no answer and a message was left.

The tenant has had **14 days** to provide a response.

7. As the tenant was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded in the tenant's absence.
8. The landlord called the following witnesses:
 - a. [REDACTED] Building Tenant – *Affirmed*
 - b. [REDACTED] Executive Director of Home Stead - *Affirmed*

Issues before the Tribunal

9. The landlord is seeking the following:
 - a) Vacant possession of the rented premises (Section 24)
 - b) Hearing expenses

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:
 - a. Sections 24, 34 and 35 of *the Act*;

- b. 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 landlord is seeking to recover possession of the rented premises located at [REDACTED].
13. The landlord testified that they are looking to have their property returned as per Section 24 the *Residential Tenancies Act, 2018*.
14. The landlord testified that the rental agreement is a written fixed term tenancy with a notice to terminate issued on 09 February 2021 under Section 24 of *the Act* (**Exhibit L # 1**) to terminate the tenancy on 15 February 2021. The landlord testified that the notice to terminate was served personally to the tenant on 09 February 2021. The landlord indicated that as of the hearing date (12 March 2021), the tenant remained in the unit. There is 1 adult living in the unit.
15. The landlord testified that the tenant has exhibited behaviors that places the safety of the other tenants at risk. The landlord reported that the tenant has been placing threatening letters under an apartment door which he fully thinks is occupied. The landlord indicated that the tenant believes that someone is stealing his data through a process called Near Field Communication. The landlord testified that the tenant placed the notes (**Exhibit L # 2, 3, 4**) under apartment B403 (an unoccupied unit).
16. The landlord called a witness from the [REDACTED] who indicated that he has been dealing with the tenant from a housing perspective and has personally witnessed the aggressive and paranoid behavior of the tenant in addition to some disjointed thinking. The witness stated that the tenant has expressed and described to him incidents that indicate the tenant is experiencing auditory hallucinations. The witness testified that he is concerned for the safety of the tenant and the other tenants of the building with this living arrangement. He further added that they are continuing to work with the tenant to support a more suitable housing arrangement. The landlord submitted as evidence a copy of the letter from [REDACTED] to the landlord (**Exhibit L # 6**).
17. In addition, the land testified that the tenant has also been disrupting the peaceful enjoyment of neighboring tenants in the building and called a witness, [REDACTED] to explain the problem. The witness indicates that the tenant plays music extremely loud so that his music drowns out her sound from her TV. She added that she lives one floor below the tenant and not directly under him. The landlord referred to an email written by the witness (**Exhibit L # 5**). The witness further added that the tenant's music can be playing all hours in the night

which keeps her awake and disturbs her peace. The witness further added that she has also been hearing all kinds of banging noises and running in the halls above her at the early hours in the morning and this did not happen prior to the tenant moving into the unit.

18. The landlord added that a submission from a locksmith indicates that the entry door to the apartment where the notes were placed was allegedly attempted to have been picked. The landlord added that he is not relying on this information as it is not a sworn statement and the witness is not available.

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 or on a fixed term, 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 09 February 2021 with a termination date of 15 February 2021. 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 behaviors described by the landlord and corroborated by the witnesses and evidence, is concerning for both the tenant and the other tenants of the building. The witness testimony from [REDACTED] is not that of a trained professional in Psychology or social work, but is a keen observance of a professional who has been dealing with individuals living with these sorts of challenges for the past 7 to 10 years of his current career. I accept his testimony as credible based on an observance and not a diagnosis.
23. Additionally, the tenant has exhibited anti-social behavior by playing excessively loud music and thereby disturbing the peaceful enjoyment of adjoining neighbors. This is not acceptable in most multifamily buildings. I am concerned given the anti-social behaviors and the apparent paranoid episodes for the safety of the entire building and the tenant himself. I find that the tenant has interfered with the

peaceful enjoyment of the landlord and adjoining tenants in the building. The landlord has established there was just cause for issuing a short notice under the *Residential Tenancies Act, 2018*.

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 proper and valid. Therefore, the landlord is entitled to an order for vacant possession along with an order for any incurred costs to certify the order and all costs associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

Decision

26. The landlord's claim for vacant possession succeeds. The landlord is further awarded costs incurred for the certification of the order or associated with the enforcement of the Possession Order by the High Sheriff of NL.

Issue 2: Hearing Expenses

Landlord Position

27. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (██████) (**Exhibit L # 7**). The landlord is seeking this cost.

Analysis

28. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlord 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

29. The tenant shall pay the reasonable expenses of the landlord in the amount of \$20.00

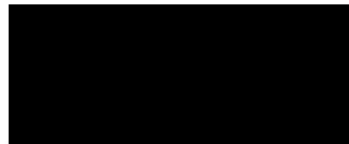
Summary of Decision

30. The landlord is entitled to the following:

- a) **Hearing Expenses** **\$20.00**
- b) **Vacant Possession of the Rented Premises**
- c) **An order for any and all costs charged to certify the order or associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.**

17 March 2021

Date



Michael Greene
Residential Tenancies Tribunal