

Residential Tenancies Tribunal

Decision 19-0058-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:45 am on 07 February 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and via teleconference to the Residential Tenancies Office in Mt Pearl.
2. The landlord, [REDACTED], hereafter referred to as landlord1, participated in the hearing. The Landlord, [REDACTED], hereafter referred to as landlord2, participated in the hearing.
3. The tenant, [REDACTED], hereafter referred to as tenant, did not participate in the hearing.
4. 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 1st of each month. A security deposit in the amount of \$325.00 was collected on the tenancy on or about November 2, 2018. The landlord indicated that a termination notice was issued to the tenant on January 21, 2019 for the intended termination date of January 27, 2019 under Section 24 of the *Residential Tenancies Act*, 2018.
5. In a proceeding under the *Residential Tenancies Act*, 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 application was AMENDED at the hearing to add a second landlord, [REDACTED].

7. The landlords called a witness who appeared via telephone from [REDACTED]. The witness was [REDACTED] – **Affirmed**, here after referred to as **YW**, and is the tenant living upstairs from the respondent.
8. 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 landlords show that the tenant was served with the notice of this hearing on the **27 January 2019** by serving the documents to the tenant via electronic address [REDACTED] and providing verification that the documents were sent to this address. The tenant has had **10 days** to provide a response.

Contact with the tenant was not attainable prior to the hearing.

9. 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 applicants, I proceeded with the hearing in the tenant’s absence.

Issues before the Tribunal

10. The landlords are seeking the following:
 - a) Payment of rent owing **\$800.00**;
 - b) Vacant possession of the rented premises;
 - c) Hearing expenses.

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
12. Also relevant and considered in this case are Sections 19, 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: Rent Owing - \$800.00

Relevant Submissions

Landlord Position

13. Landlord1 stated that they had entered into a fixed term rental agreement with the tenant, commencing November 2, 2108 and set to terminate May 1, 2019. The agreed rent was set at \$650.00 per month and due on the 1st day of each month with a security deposit in the amount of \$325.00 collected on this tenancy. Landlord1 stated that they are seeking the balance owing for January 2019 in the amount of \$150.00 and rent for February 2019 that has come due in the amount of \$650.00 for the total claim of \$800.00. The landlord supplied the rental records (Exhibit L # 1) which is an e-transfer (\$400) and a text conversation regarding a \$100.00. Landlord1 stated that as of the hearing date 07 February 2019 the tenant remained in the unit and rent was outstanding in the amount of \$800.00 as claimed by the landlords up to February 28, 2019.

Analysis

14. I have reviewed the testimony and evidence of the landlords in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) is the rent that is being claimed by the landlords actually owed by the tenant.
15. With respect to the arrears being claimed, I agree with the landlords that rent is owed. Rent is required to be paid by the tenant for use and occupation of the rented premises as set out in the written rental agreement established when the tenancy began. Records are clear that rent is owed for the period ending January 31, 2019 in the amount of **\$150.00**. Further, rent for February 2019 came due on February 1, 2019, however for the purpose of this decision rent can only be calculated up to and including the day of the hearing (07 February 2019). That calculation is $(\$650.00 \times 12 \text{ months} = \$7800.00 \div 365 \text{ days} = \$21.37 \text{ per day} \times 7 \text{ days} = \$149.59)$. Rent for February 2019 then is **\$149.59**. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$21.37** beginning on 08 February 2019 and continuing until the day the landlords obtain vacant possession of the rented premises.

Decision

16. The landlords' total claim for rent succeeds as follows:
- a) Rent owing up to January 31, 2019 \$150.00
 - b) Rent owing for February 1 – 7, 2019..... 149.59
 - c) Total Arrears **\$299.59**

 - d) A daily rate beginning February 8, 2019 **\$21.37**

Issue 3: Vacant Possession of the Rented Premises

Landlord Position

17. The landlords are seeking to recover possession of the rented premises located at [REDACTED].
18. Landlord1 testified that when the tenant and her guests (family members) have been extremely disruptive since moving into the rented premises. They testified that a notice to terminate was issued under Section 24 of *the Act* (Exhibit L # 2) to terminate the tenancy on January 27, 2019. Landlord1 testified that the notice to terminate was served personally by Landlord1 to the tenant on January 21, 2019. Both landlords testified that as of the hearing date (February 7, 2019), the tenant remained in the unit. The landlords further testified that to the best of their knowledge, there are 2 adults living in the unit.
19. Landlord1 stated that from the time the tenant moved into the property, there has been a consistent and continual amount of noise coming from the property which included excessive barking and wining from the dog in the unit, heated and excessively loud arguments between the tenant and family members at all hours from day to evening to early in the morning (2:00 or 3:00 am). Landlord1 submitted a Chronology of complaints (Exhibit L # 3) which she read into the record. A witness for the landlords, YW, advised that the tenant below her was excessively noisy and indicated that the level of violence is scary to the point that she had her mother sleep over at her unit on occasion. She indicated that she doesn't feel secure in her property.
20. Landlord1 stated that the tenant had Bell Aliant attend to the property for TV/internet installation and failed to notify the landlords that this was scheduled. Landlord1 stated that the adjacent tenant was completely unaware that the worker was going to be around the property and was unsettled with this

Analysis

21. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 24 (1), 10(1) 7(a) and 34 as well as the service requirements identified in section 35.
22. The issue of interference of peaceful enjoyment and reasonable privacy of the landlord and/or adjacent tenants has been outlined and established by the testimony of both the landlords and the landlord witness, YM, in paragraphs 17-19 above. Paragraph 20 above deals with a commercial service provider installing as service for a tenant. This is not seen as an issue of peaceful enjoyment but one of a commercial mistake between the owner of the property and the service provider. Should the landlord have an issue with the service provider being on their property without permission, they should contact with the service provider as the tenant cannot be held responsible for their actions or policies. I accept the evidence of the landlords and note that a continual pattern of yelling and screaming between the tenant and family members is not an accepted behavior when other tenants are living in the same dwelling building. The social norm is to respect the privacy and peaceful enjoyment of others and not subject other tenants to a sense of insecurity and violent actions. I find that the tenant has interfered with both the peaceful enjoyment and reasonable privacy of the landlords and the adjacent tenant far beyond the socially accepted norms.
23. Section 24 (2) requires that when a tenant contravenes statutory condition 7(a) as set out in section 10(1) of The Act, the landlords may terminate the tenancy 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 January 21, 2019 with a termination date of January 27, 2019. As established in paragraph 21, the tenant is in contravention of statutory condition 7(a) of *The Act*. I further find that as the date of termination identified on the notice is at least 5 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 24 (2).

24. Sections 24 (2) 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 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.*

25. As identified in paragraph 17, Landlord1 testified that she served the termination notice personally which is a permitted method of service identified under section 35.
26. 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

27. 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.

