

Residential Tenancies Tribunal

Decision 19-0022-02

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 11:00 am on 02 October 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as the landlord1, participated in the hearing. (*Affirmed*)
3. The applicant, [REDACTED], hereafter referred to as the landlord2, participated in the hearing. (*Affirmed*)
4. The respondent, [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 \$450.00 per month and due on the 1st of each month. It was stated that there was no security deposit collected on this tenancy. The landlord issued two termination notices: (1) a notice dated 09 July 2019 for the intended termination date of 15 August 2019 under no particular section of the *Residential Tenancies Act, 2018 (Exhibit T # 1)* and (2) a notice dated 20 July 2019 for the intended termination date of 15 August 2019 under Section 24 of the *Residential Tenancies Act, 2018 (Exhibit L # 1)*.
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 tribunal AMENDED the claim to reflect the legal first name of the landlord2 to be [REDACTED].

Issues before the Tribunal

8. The landlords are seeking the following:
 - a) Vacant possession of the rented premises
 - b) Hearing expenses
9. The tenant is seeking the following:
 - c) An Order to Determine the Validity of a Termination Notice

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

Relevant Submissions

Landlord Position

12. The landlords are seeking to recover possession of the rented premises located at [REDACTED].
13. The landlords testified that the tenant has become disruptive to the other tenants in the building and has interfered with the peaceful enjoyment and reasonable privacy of the property for the adjacent tenant and in turn, the landlords. The

landlords testified that they issued two notices to the tenant with the first one dated 09 July 2109 (**Exhibit T # 1**) issued with errors. Landlord1 further testified that a second notice (**Exhibit L # 1**) was issued to the tenant on 20 July 2019 for the intended termination date of 15 August 2019 thereby terminating the tenancy on this date.

14. The landlords advise that this tenant lived in another property belonging to the landlords in [REDACTED] and there were issues with this tenant and a long term tenant in that building. The landlords advised that they moved this tenant to the current building and again issues with a long term tenant ensued.
15. The landlords called the adjacent tenant as a witness, AR, who testified that she has been living in the property for 15 years without issue. She stated that the tenant next door, has taunted her and approached her in the garden hanging out clothes being confrontational. The witness stated that the tenant accused her of smoking dope in her kitchen and calling the police to attend the property when there is nothing going on. She stated that her 15 years old son will not come to her place of residence because he is afraid of the adjoining tenant.
16. The landlords advise that there is a constant barrage of text messages complaining of the other tenants' actions. Further the landlords have stated that the Police have been called several times regarding complaints of marijuana.
17. The landlords testified that the notice to terminate was served to the tenant on 20 July 2019 for the intended termination date of 15 August 2019. The landlords indicated that as of the hearing date (02 October 2019), the tenant remained in the unit.

Tenant Position

18. The tenant claims that the adjacent tenant is smoking marijuana in her property. She claims there is no issues between them.
19. The tenant became aggressive on the conference call and was warned of her behavior. She began to question the landlords' witness and began to be aggressive again. Additionally, the behavior also had the witness react and become verbally aggressive.
20. No further testimony was taken at that time and the witness was excused.

Analysis

21. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 19(4) and 34 as well as the service requirements identified in section 35.

22. The issue of interference with peaceful enjoyment of the property is clearly related to the relationship of the two adjoining tenants in the property located at [REDACTED]. There is an apparent history with this tenant from previous properties owned by the landlords. The history amounts to confrontation with the other tenants as has been indicated by the landlords.
23. The witness in this matter, AR, has direct experience with the tenant and has indicated that her son is afraid to come to her place of residence because of the adjoining tenant. She stated that she is doing nothing different than she has been doing for the 15 years she has been living in the unit.
24. It is also apparent that the issue at hand for the tenant respondent is the smoking of marijuana by the witness in this matter. It should be pointed out at this juncture, that the legalization of marijuana has been in place since 17 October 2018.
25. The landlords issued a termination notice under section 24 of the *Residential Tenancies Act* by placing a copy on the rented premises. Section 24 requires that the landlords provide notice to the tenant that the rental agreement is terminated and the tenant is required to vacate the property on a specified date not less than 5 days after the notice has been served. I accept the evidence of the landlords and find that the tenant has interfered with the peaceful enjoyment and reasonable privacy of the adjoining tenant and in turn the landlords by confronting the tenant in or on her rented premises, by consistently texting complaints of a frivolous nature to the landlords and by contacting the Police regarding matters that were not of an obvious legal nature.
26. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 1**), I find the notice was served on 20 July 2019 with a termination date of 15 August 2019. As established above, the tenant has interfered with the peaceful enjoyment of the adjoining tenants and landlords. I further 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(2). 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.*

27. As identified above, landlord1 testified that he served the termination notice by placing a copy on the rented premises which is a permitted method of service identified under section 35.
28. 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

29. 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.

Issue 2: Hearing Expenses

Landlord Position

30. The landlords paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL ([REDACTED]) (**Exhibit L # 2**). The landlords are seeking this cost.

Analysis

31. 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*. As such, I find the tenant is responsible to cover these reasonable expenses.

Decision

32. The tenant shall pay the reasonable expenses of the landlords in the amount of \$20.00.

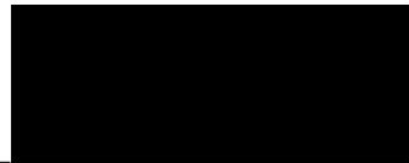
Summary of Decision

33. The landlords are entitled to the following:

- a) Hearing Expenses \$20.00
- b) Total owing to Landlords \$20.00**
- c) Vacant Possession of the Rented Premises.
- d) 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.

5 November 2019

Date



Michael Greene
Residential Tenancies Tribunal