

Residential Tenancies Tribunal

Decision 19-0069-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 11:15 am on 29 October 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and via Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing and was represented by [REDACTED] – Property Manager - **Affirmed**.
3. The respondent, [REDACTED], hereafter referred to as the tenant, did not participate in the hearing.
4. 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

5. 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 **09 September 2019** by serving the documents to the tenant personally at the rental address. The tenant has had **50 days** to provide a response.

There was no contact info on file for the tenant to attempt contact in advance of the hearing.

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 applicant, I proceeded with the hearing in the tenant's absence.

Issues before the Tribunal

6. The landlord is seeking the following:
 - a) Vacant Possession
 - b) Hearing expenses.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
8. Also relevant and considered in this case are Sections 24, 34 and 35 of *the Act*; Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*; Policy 9-3: *Claims for Damages to the Rental Premises*.

Issue 1: Vacant Possession

Relevant Submissions

Landlord Position

9. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
10. The landlord testified that the tenant has become disruptive at the property and the aggressive nature is not a good fit for the building.
11. The landlord referred to numerous complaints received from other tenants

concerning the cursing and swearing in the hallways and confrontations with visitors and guests of other tenants to the building. The landlord submitted a letter issued to the tenant in this regard (**Exhibit L # 1**) and dated 24 January 2019.

12. The landlord additionally referred to a second occasion when a formal letter was delivered to the tenant (**Exhibit L # 2**) and dated 18 June 2019. The landlord referenced issues with the tenant's dog and the aggressiveness towards the tenants and an attempt to bite another tenant.
13. Lastly the landlord referenced an issued on 24 October 2019 and submitted a text from the resident manager (**Exhibit L # 4**) who attended to the incident. The text references that the tenant of unit 9 was fighting with unit 3 and there was loud banging and screaming disturbing the peaceful enjoyment of the building.
14. The landlord stated that the anger and aggressive nature towards other tenants is not working out and can't be tolerated in the building. The landlord testified that a termination notice (**Exhibit L # 3**) was issued to the tenant on 06 September 2019 for the termination date of 12 September 2019 under section 24 of the *Act*, thereby terminating the tenancy on this date. The landlord indicated that as of the hearing date (29 October 2019), the tenant (1 Adult) remained in the unit.

Analysis

15. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 24(2) and 34 as well as the service requirements identified in section 35.
16. The issue of interference with peaceful enjoyment of the property is clearly related to the angry outbursts and the aggressive nature of the tenant.
17. The landlord issued a termination notice under section 24 of the *Residential Tenancies Act* by personally delivering a copy to the tenant at the rented premises. Section 24 requires that the landlord 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 landlord and find that the tenant has interfered with the peaceful enjoyment and reasonable privacy of the adjoining tenant and the landlord by displaying angry outbursts and fighting with other tenants.
18. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 3**), I find the notice was served on 06 September 2019 with a termination date of 12 September 2019. As established above, the tenant has interfered with the peaceful enjoyment of the adjoining tenants and landlord. 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.*

19. As identified above, the landlord testified that he served the termination notice by personal service which is a permitted method of service identified under section 35.
20. 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 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

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

Issue 3: Hearing Expenses

Landlord Position

22. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL [REDACTED] (**Exhibit L # 5**). The landlord is seeking this cost.

Analysis

23. 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

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

Summary of Decision

25. The landlord is entitled to the following:
- a) Hearing Expenses \$20.00
 - b) **Total Owing Landlord** **\$20.00**
 - c) Vacant Possession of the Rental Property
 - d) The landlord is further awarded costs associated with the enforcement of the Possession Order by the High Sheriff of NL.

08 November 2019

Date

[REDACTED]

Michael Greene
Residential Tenancies Tribunal