

## Residential Tenancies Tribunal

Decision 19-0086-01

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at 11:30 am on 21 November 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 landlord, participated in the hearing. The landlord was represented by [REDACTED] - **Affirmed.**
3. The respondent, [REDACTED], hereafter referred to as the tenant, participated in the hearing and was represented by [REDACTED] - **Affirmed.**
4. The details of the claim were presented as a written monthly rental agreement with rent set at \$690.00 per month and due on the 1<sup>st</sup> of each month. There was a security deposit in the amount of \$345.00 collected on 31 October 2017 for the tenancy. The landlord issued a termination notice dated 22 April 2019 for the intended termination date of 31 October 2019 (for the end of the rental agreement) under Section 18 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 affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **06 November 2019** by serving the Application for Dispute Resolution documents to the tenant personally at the rental address.
7. The tenant failed to serve the landlord a copy of the counterclaim ( [REDACTED] ) testing the validity of the notice. The landlord agreed to waive their right of service and continued with the hearing as the validity would be determined with their claim.

## **Issues before the Tribunal**

8. The landlord is seeking the following:
  - a) Vacant possession of the rented premises

## **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 18, 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 the *Residential Tenancies Act, 2018*.

13. The landlord testified that a notice to terminate was issued under Section 18 of *the Act* (**Exhibit L # 1**) to terminate the tenancy on 31 October 2019. The landlord testified that the notice to terminate was served personally by the landlord to the tenant on 22 April 2019. The landlord indicated that as of the hearing date (21 November 2019), the tenant remained in the unit. The landlord further testified that to the best of her knowledge, there is 1 adult living in the unit.

### Tenant Position

14. The tenant testified that he received the notice to terminate the tenancy (**Exhibit L # 1**) and filed a counterclaim testing the validity but did not serve the documents.
15. The tenant testified that he did not dispute the validity of the notice but was looking for time so he can get into Emmanuel House.

### **Analysis**

16. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 18 (9) and 34 as well as the service requirements identified in section 35.
17. Section 18 (2)(b) requires that when a premises is rented for month to month, the landlord may terminate the tenancy and the tenant is required to vacate the residential premises on a date not less than 3 months before the end of the rental period. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 1**), I find the notice was served on 22 April 2019 with a termination date of 31 October 2019. I find that as the date of termination identified on the notice is at least 3 months before the end of the rental period and the date the tenant is required to move out, the termination notice is in full compliance with the requirements of section 18 (2) (b). Sections 19 (4) 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.

18. As identified above, the landlord testified that the termination notice was served personally which is a permitted method of service identified under section 35.

*section 18 (9)*

*In addition to the requirements under Section 34, a notice under this section shall*

- (a) be signed by the landlord;*
- (b) be given not later than the first day of a rental period*
- (c) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*
- (d) 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. 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 as of 31 October 2019, 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**

20. 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.

## Summary of Decision

21. The landlord is entitled to the following:

- a) **Vacant Possession of the Rented Premises.**
- b) **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.**

29 November 2019

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**Date**



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**Michael Greene**

**Residential Tenancies Tribunal**