

Residential Tenancies Tribunal

Application [REDACTED] Decision 19-0360-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:20 a.m. on July 18, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The landlords, [REDACTED] and [REDACTED] hereafter referred to as landlord1 and landlord2, respectively, participated in the hearing.
3. The tenant, [REDACTED] hereafter referred to as the tenant, did not attend the hearing.

Preliminary Matters

4. The tenant was not present or represented at the hearing. Prior to the hearing I called the number the landlords had for the tenant but the number was no longer in service.
5. This Tribunal's policy concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) a respondent to an application must be served with an application for dispute resolution 10 clear days prior to the hearing date, 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.
6. The affidavit of service submitted by the landlords show that the notice of this hearing was sent by Xpresspost on June 27, 2019 and the mail was delivered on June 28, 2019. The tenant has had 19 days to provide a response. 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, I proceeded with the hearing in his absence.

Issues before the Tribunal

7. The landlords are seeking the following:
 - a. Vacant possession of the rental premises;
 - b. Hearing expenses.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
9. Also relevant and considered in this case are Sections 20, 34 and 35 of the Act and Policy 12-1: *Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Vacant Possession of the Rental Premises

10. An application for vacant possession is determined by the validity of the termination notice issued by the landlord. In this case, the termination notice was issued under Section 20 of the Act where the tenant contravenes the Act and fails to remedy the contravention within a reasonable time after the notice has been served.

Landlord Position

11. Landlord1 stated that the tenant moved into the unit on January 18, 2018 on a written (LL #1) month to month tenancy with rent set at \$650.00 per month due on the 1st of each month. Landlord1 testified that one of the terms in the lease agreement was that there is no smoking. They have received multiple complaints from the upstairs tenant that the tenant is smoking in the unit. On May 22, 2018 they sent a letter (LL #4) to the tenant telling him to stop smoking in the unit but the tenant has continued to smoke in the unit. She said they have been at the unit and they could smell smoke.
12. Landlord1 further testified that they have received text messages (LL #5) on May 20, 2018, October 4, 2018, April 30, 2019 and May 29, 2019 and they have received a number of phone calls from the upstairs tenant complaining about the smoke. They served a termination notice (LL #2) on the tenant under section 20 (material breach) of the Act. The notice was posted on the door on May 9, 2019 with an effective date of June 30, 2019. She said the last time they spoke with the tenant was about six months before they served the termination notice. They have not been able to get in touch with him. There is

no communication with him. They do not have a phone number for him and he does not answer the door when they go to the unit.

13. Landlord2 testified that when he went to the unit on/or about June 26, 2019 he could smell smoke coming from the unit as the window was opened. He testified that when they would receive a complaint about the smoking in the unit, he would follow up the complaint and go and knock on the tenant's door.

Analysis

14. I have reviewed the testimony and evidence of the landlords in this matter. As far as I can see there are 2 issues that need to be addressed: (i) is the notice issued by the landlords valid; and (ii) are the landlords granted vacant possession. I find one of the terms in the rental agreement signed by both the landlords and the tenant is that there is no smoking in the unit. I also find that the tenant was smoking in the unit as the landlords received complaints from the upstairs tenant about the tenant smoking in the unit and the landlords have smelled smoke coming from the unit. Further, the landlords sent a written notice to the tenant on May 22, 2018 telling him to stop smoking in the unit.
15. Section 20.(2) where a tenant contravenes a material breach of a rental agreement, the landlord may give the tenant written notice of the contravention. The rental agreement signed by both the landlords and tenant did not allow for smoking in the unit and the tenant smoked in the unit. The landlords gave a letter to the tenant on May 22, 2018 to stop smoking but the tenant continued to smoke in the unit. As the tenant agreed not to smoke in the unit as per the lease agreement but he was smoking in the unit, I find the landlords had grounds to terminate the tenancy under section 20 of the Act. Thus, the notice is a valid notice.
16. Section 20(4) and 34 outlines the requirements on how a termination notice should be completed. Section 35 outlines how a termination notice should be served. After reviewing the termination notice, I find the notice contains all of the required information to serve on the tenant and the notice was served in accordance with the Act.

Decision

17. The claim for vacant possession succeeds. The landlords are awarded costs associated with the enforcement of the Possession Order by the High Sheriff of NL.

Issue 2: Hearing Expenses - \$35.24

18. Under the authority of Section 47.(q) the director may require the unsuccessful party to pay costs to the successful party to an application. Costs eligible to be awarded are identified in *Policy 12-1: Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Landlord Position

19. The landlords paid an application filing fee in the amount of \$20.00 and \$15.24 to send the application by Xpresspost for a total of \$35.24. The landlords are seeking these costs.

Analysis

20. The costs the landlords incurred to make the application and to have the application served are considered reasonable expenses as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. Therefore, I find the tenant is responsible to cover the costs of the hearing expenses in the amount of \$35.24.

Decision

21. The tenant shall pay the landlords' hearing costs in the amount of \$35.24.

Issue 3: Application for Security Deposit

22. Under the authority of Section 47.(j) the director may authorize a landlord to offset money a tenant owes to the landlord against money the landlord owes to the tenant. Further under subsection (m), the director has the authority to determine the disposition of the security deposit.

Landlord Position

23. The landlords testified a \$450.00 security deposit was paid on January 18, 2018.

Analysis

24. A security deposit was paid in January 2018. As the landlords have been successful in their claim for the hearing expenses, they shall retain \$35.24 from the \$450.00 security deposit as outlined in this decision and order.

Decision

25. The landlord shall retain \$35.24 from the security deposit as outlined in this decision and attached order.

Summary of Decision

26. The landlord is entitled to the following:

- a) Hearing expenses\$35.24
- b) The landlords are authorized to retain \$35.24 from the security deposit to cover the cost of the hearing expenses;
- c) Vacant Possession of the rented premises;
- d) Any cost incurred should the landlord be required to have the Sheriff enforce the attached Order of Possession.

July 26, 2019
Date


Residential Tenancies Section