

Residential Tenancies Tribunal

Application [REDACTED] Decision 19-0404-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:40 p.m. on June 13, 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 tenants, [REDACTED] and [REDACTED] hereafter referred to as tenant1 and tenant2, respectively, participated in the hearing.

Issues before the Tribunal

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

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.

6. Also relevant and considered in this case are Sections 24, 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 unit

7. A successful order 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 24 of the Act where the tenant contravenes the Act by interfering with the peaceful enjoyment of the landlords.

Landlord Position

8. The landlords stated that the tenants moved into the unit the end of October 2018 with rent set at \$1300.00 per month due on the 1st of each month. The tenancy began on November 1, 2018.
9. Landlord1 testified that the tenants have been interfering with their peaceful enjoyment by refusing to let them into the unit to correct problems. They also have received a noise complaint from the downstairs tenant.
10. Landlord1 testified that on February 9, 2019 she sent a text message to tenant2 asking if landlord2 could go to the house to fix the plugs that the tenants were requesting to have fixed. The tenants refused. Then on May 17, 2019 she received a text message from the tenants stating they have a problem with the water pressure in the unit. Landlord1 replied by saying there's nothing they can do tonight they will be down tomorrow.
11. Landlord1 testified that on May 18, 2019 she sent a text message notifying the tenants that they would be going into the unit on May 20, 2019 to fix the issues the tenants had requested to be repaired. They also needed to check on the water pressure. Landlord1 said the tenants told them they could not come into the unit so they never went to the door on May 20th to try and get into the unit. Landlord1 presented copies of the text messages (LL #2).
12. Landlord1 testified that they received a call from the downstairs tenant on May 22, 2019 concerning the noise coming from the upstairs unit that morning. The downstairs tenant told her the tenants were very loud and there was a lot of cursing and swearing. The tenants left the unit for a while but they left the music on top high. The downstairs tenant also told her she has heard noise from the tenants before this incident but she has tolerated the noise. Landlord1 said the downstairs tenant informed her that on one occasion the upstairs tenant came down to her unit and he got right up in her boyfriend's face.

13. Landlord2 testified that landlord1 received a text message on May 17, 2019 from the tenants concerning the water pressure. He went to the property on May 18, 2019 to fix the problem. When he went to the property he had to go to the basement because the pump was located in the basement. He fixed the pump. When he had fixed the problem tenant1 was outside and he asked tenant1 to let him in upstairs. Tenant1 refused him. Then on/or about May 21, 2019 they posted a notice to enter the premises on May 22, 2019 to check on the unit and the water pressure. The tenant through a text message refused them entry. He said they then posted a termination notice on the door on May 22, 2019 to vacate on May 28, 2019 (LL #1).
14. Landlord2 testified that on May 20, 2019 he discovered the tenants had changed the locks to the unit.

Tenant Position

15. Tenant1 testified that they requested electrical repairs in December 2018. The electrical problems were fixed when they received the text message in February 2019 notifying them the landlord was coming to fix the plugs. He said he hired an electrician to make the repairs.
16. Tenant1 also testified that on May 18, 2019 when landlord2 was at the house to fix the pump he never asked him if he could go into the upstairs unit.
17. Tenant1 testified the deadbolt broke in January or February 2019. He replaced the deadbolt but he never provided a key to the landlords.
18. Tenant1 also testified they were never given any notice that the downstairs tenant was complaining about the noise.

Analysis

19. I have reviewed the testimony and evidence of the landlords and the tenants. I find the landlords served a termination notice under section 24 of the Act on the tenants on May 22, 2019 to vacate on May 28, 2019. I also find the landlords gave notices to the tenants through text messages that they were entering the property. However, the notices that were sent by text message were not served in accordance with section 34 of the Act. The notices were not in a form prescribed by the minister; they did not contain the name and address of the recipient, and they did not identify the residential premises for which the notice was given.

Decision

20. The claim for vacant possession is unsuccessful.

Issue 2: Hearing Expenses - \$20.00

21. 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

22. The landlords paid an application filing fee in the amount of \$20.00. The landlords are seeking this cost.

Analysis

23. The cost the landlords incurred to make the application is considered a reasonable expense as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. As the landlords' claim has been unsuccessful, the claim for hearing expenses fails.

Decision

24. The claim for hearing expenses fails.

Summary of Decision

25. The landlords' claim for vacant possession is unsuccessful.

June 21, 2019

Date


Residential Tenancies Section