

Residential Tenancies Tribunal

Decision 19-229-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:25 am on 10 April 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate.

Issues before the Tribunal

3. The landlord is seeking an order for vacant possession of the rented premises.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are Sections 10 and 24 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenant was not present or represented at the hearing. This Tribunal’s policies 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 claim and notice of the hearing 10 clear days prior to the hearing date and, where the a 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 has been properly served. With his application the landlord submitted an affidavit stating that the tenant was personally served with notice of the hearing on 28 March 2019 and he has had 12 days to provide a response. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.

7. The landlord called the following witnesses:
 - [REDACTED] – tenant at [REDACTED],
 - [REDACTED] – subtenant at [REDACTED] and [REDACTED]'s son.

Issue 2: Vacant Possession of the Rented Premises

Relevant Submissions

8. The landlord stated that he had entered into a monthly rental agreement with the tenant on 03 July 2018 and a copy of that executed rental agreement was submitted at the hearing ([REDACTED] #1). The agreed rent was set at \$600.00 per month and it is acknowledged in this agreement that the tenant had paid a security deposit of \$500.00.
9. The tenant's rental unit at [REDACTED] is a ground floor apartment located on the back of an adjoining apartment, [REDACTED]. The landlord has been renting [REDACTED] to [REDACTED], an [REDACTED]-year old woman, for the past 12 years. She, in turn, is subletting a room in that apartment to her son, [REDACTED]. Both [REDACTED] and [REDACTED] were called as witnesses.
10. [REDACTED] testified that he has been having numerous run-ins with the tenant during the course of his tenancy and many of these run-ins concern disputes about parking. He stated that the tenant is a mechanic and often has 1 or 2 cars, which he is in the process of repairing, parked in their shared driveway. Because of these extra cars in the driveway, [REDACTED] stated that he often finds that his own car gets blocked in the driveway and he has to ask the tenant to move his vehicles. He testified that the tenant is often uncooperative when asked about moving his vehicles and there have been several confrontations as a result.
11. [REDACTED] described incidences where the tenant had banged his hand on his car as he walked by and he stated that he had recently thrown an ashtray at his car. He also reported that there was one occasion where the tenant stood behind [REDACTED]'s car preventing him from backing out of his driveway.
12. According to [REDACTED], the tenant has also been violent on occasions. He stated that on numerous occasions he had threatened to physically assault him and he had once grabbed him by the scruff of his shirt. On another occasion the tenant spat in his face. He also testified that the tenant had assaulted his brother and struck him several times with a baseball bat.

13. ██████ claimed that the tenant's behaviour has gotten worse in the past couple of weeks and he reported that the tenant, on receiving notice that he was being evicted, stated: "If I have to leave here, I will burn this place down".
14. ██████ stated that the tenant's behaviour has been interfering with his peaceful enjoyment and the peaceful enjoyment of his mother, ██████. He stated that his mother is fearful of the tenant and she does not like being left alone in her apartment.
15. ██████ provided similar testimony as that given by ██████. She reiterated his claims that the tenant had been blocking him in his driveway and that there had been several violent confrontations between the tenant and ██████. She testified that the tenant had once grabbed ██████ by his shirt and on another occasion had spat in his face. She also testified that the tenant had violently assaulted another of her sons with a baseball bat.
16. ██████ also claimed that the tenant had been violating her privacy. She claimed that he often comes on to her property without her permission and can frequently be seen walking in front of her dining room window. She also stated that the tenant has also been seen peeping through her windows. ██████ also reported that the tenant has, on numerous occasions, been found looking through her mailbox. ██████ stated that she now keeps her dining room window curtains closed and she can longer enjoy sitting by that window watching the comings and goings of the day.
17. ██████ also reiterated ██████'s claim that the tenant had threatened to burn the house down and she testified that she is fearful that he will carry through with that threat. She also testified that the tenant had stated that he had a machete in his apartment and that he would slice someone's throat.
18. ██████ also complained that there have been several occasions where the tenant had been loudly playing his music and was he would continuously bang on the adjoining walls for long periods of time.
19. Besides the complaints voiced by ██████ and ██████, the landlord testified that the tenant had also been interfering with his rights as a landlord. He claimed that on 26 March 2019, after he had posted a 24 hour notice to enter the rental unit, the tenant called him and told him not to enter the property and he threatened to assault him if he did. The landlord testified that the tenant had again threatened him and tried to intimidate him on 28 March 2019 when the landlord served him with notice of the hearing.
20. Because of the complaints he had received from ██████ and ██████ and because of the way the tenant had been acting towards him, the landlord issued a termination notice to the tenant on 27 March 2019 and a copy of that notice was submitted with his application (█████ #2). That notice was issued under section 24 of the *Residential Tenancies Act, 2018* (notice where tenant

contravenes peaceful enjoyment and reasonable privacy) and it had an effective termination date of 02 April 2019.

21. The landlord stated that the tenant had not vacated as required and he is seeking a certified order for vacant possession of the rented premises. He stressed that this matter is urgent and he fears for the safety of [REDACTED] and [REDACTED].

Analysis

22. Statutory condition 7.(a), set out in section 10.(1) of the *Residential Tenancies Act, 2018* states:

Statutory conditions

10. (1) *Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:*

...

7. Peaceful Enjoyment and Reasonable Privacy -

(a) The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.

and according to section 24 of this Act:

Notice where tenant contravenes peaceful enjoyment and reasonable privacy

24. (1) *Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 7(a) set out in subsection 10(1), the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.*

(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.

23. I found the testimony of the landlord and his witnesses to be credible and believable. Based on this testimony, I find it probable that the tenant had been acting in an antisocial and threatening manner towards the landlord and [REDACTED] and he had been violating the privacy of [REDACTED].
24. The sort of behaviour described by the landlord and his witnesses is unreasonable and it is easy to see why [REDACTED] is fearful. I conclude that the tenant's unreasonable behaviour had been interfering with [REDACTED]'s and [REDACTED]'s quiet and peaceful enjoyment of their home and the landlord was therefore in a position to issue the tenant a termination notice under this section of the *Act*.
25. As the termination meets the requirements set out in this section of the *Act*, and as it was properly served, it is a valid notice.

Decision

26. The landlord's claim for an order for vacant possession of the rented premises succeeds
27. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

Issue 3: Hearing Expenses

28. The landlord submitted a hearing expense claim form and a receipt for \$20.00 for the costs of filing this application.
29. He is also seeking \$10.80 for the costs of making colour photocopies, \$5.83 for black-and-white photocopies, \$360.00 in compensation for making 2 trips from [REDACTED] to St. John's, \$24.00 in compensation for making 2 trips to the Residential Tenancies Board, \$495.00 for 9 nights' accommodation in St. John's and \$405.00 for meals for 9 days. No receipts for these expenses were submitted at the hearing.

Analysis

30. This Section's policy regarding hearing expenses is that the party who is successful in attaining an award shall have their hearing expenses awarded also. Legitimate hearing expenses include fees for making an application to this Section, the costs of serving the claim and notice of the hearing (either personally, through registered mail or through a process server, etc.), the costs of subpoenaing witnesses and the costs associated with preparing documents for the hearing (photocopies, development of photographs, etc.).

31. The only hearing expense for which the landlord had a receipt was for the cost of filing this application. No receipt was submitted for the costs of printing and photocopying. The other expenses the landlord is claiming here are either not claimable expenses or they are expenses incurred under the normal course of doing business as a landlord.

Decision

32. The landlord's claim for hearing expenses succeeds in the amount of \$20.00. That amount shall be deducted from the \$500.00 security deposit being held by the landlord.

Summary of Decision

33. The landlord is entitled to the following:

- An order for vacant possession of the rented premises,
- The tenants shall also pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.
- The landlord is authorized to retain \$20.00 of the security deposit in compensation for his hearing expenses.

11 April 2019

Date



John R. Cook
Residential Tenancies Tribunal