

Residential Tenancies Tribunal

Decision 19-0326-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:20 a.m. on May 23, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The tenant, [REDACTED], hereafter referred to as the tenant, participated in the hearing.
3. The landlord, [REDACTED], represented by [REDACTED], hereafter referred to as the landlord, participated in the hearing.

Preliminary Matters

4. [REDACTED] represented the tenant at the hearing.

Issues before the Tribunal

5. The tenant is seeking the following:
 - a. Validity of the termination notice;
 - b. Hearing expenses.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
7. Also relevant and considered in this case are Sections 10 and 35 of the Act and Policy 12-1: *Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Validity of the termination notice

Tenant Position

8. The tenant stated that he moved into the unit on April 1, 2012 for a one year term and at that time the building was owned by a different company. The tenant testified that on April 23, 2019 a termination notice (T #1) under Section 10 of the *Residential Tenancies Act* was left underneath his door. He said he *does not agree with the notice*. He doesn't think it is fair to be served with the termination notice.

Landlord Position

9. The landlord testified that a termination notice under section 10 of the Act was served on the tenant on April 23, 2019 to vacate on April 30, 2019. The notice was served under peaceful enjoyment because they have been receiving complaints from the neighbors since September about the smell coming from the apartment. She said she must have used an old format when she quoted section 10.
10. The landlord testified that the company purchased the building prior to the start of her employment with the company three years ago. She said the tenant's lease was renewed in January for another 12 months.

Analysis

11. I have reviewed the testimony and evidence of the tenant and the landlord and I find a termination notice was served on the tenant on April 23, 2019 under section 10 of the Act. I also find the landlord stated the reason for the termination notice was under peaceful enjoyment.
12. Section 10 of the Act states the statutory conditions. If a tenant or landlord want to terminate a tenancy under one of the statutory conditions they are required to quote the section pertaining to that particular statutory condition. Each statutory condition has a different section and a different notice period. The

section to be given by a landlord to a tenant to terminate under peaceful enjoyment is section 24.

Decision

- 13. The termination notice issued under section 10 on April 23, 2019 is not a valid notice.

Issue 2: Hearing Expenses - \$20.00

- 14. 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*.

Tenant Position

- 15. The tenant paid an application filing fee in the amount of \$20.00. The tenant is seeking this cost.

Analysis

- 16. The cost the tenant 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*. Therefore, I find the landlord is responsible to cover the cost of the hearing expenses in the amount of \$20.00.


Decision

- 17. The landlord shall pay the tenant's hearing costs in the amount of \$20.00.

Summary of Decision

- 18. The tenant is entitled to the following:
 - a) Hearing expenses \$20.00
 - b) The termination notice the landlord served on the tenant is not a valid notice.

June 17, 2019
Date


Residential Tenancies Section