

Residential Tenancies Tribunal

Decision 19-0452-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:20 a.m. on July 9, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The landlord, [REDACTED], represented by [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The tenant, [REDACTED], hereafter referred to as tenant1, did not attend the hearing.

Preliminary Matters

4. The landlord called the following witness:
 - a. [REDACTED], Resident Manager of [REDACTED].
5. Tenant1 was not present or represented at the hearing. Prior to the hearing I called the number on file for tenant1. A lady answered the telephone call and she did not identify herself, but she stated that tenant1 was not available.
6. 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.
7. The affidavit of service submitted by the landlord shows that the notice of this hearing was personally served on June 11, 2019 and tenant1 has had 27 days to provide a response. As tenant1 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 her absence.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a. Vacant possession of the rental premises;
 - b. Hearing expenses.

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 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 Premises

11. 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 24 of the Act where tenant1 contravenes the Act by interfering with the peaceful enjoyment of the other tenants.

Landlord Position

12. The landlord stated that tenant1 moved into the unit on October 1, 2017 on a month to month tenancy with rent set at \$940.00 per month due on the 1st of each month. Since the tenancy started, the rent has increased to \$955.00 per month. The landlord testified that they believe that there are two other people living in the unit with tenant1, [REDACTED], tenant1's son and his girlfriend, [REDACTED]. They have received complaints from other tenants in the building concerning the people who are living with tenant1. They have sent letters (LL #2) to tenant1 on two occasions concerning complaints they have received. The landlord said a termination notice under section 24 (interference with peaceful enjoyment) was posted on the door of the unit on May 29, 2019 with an effective date of June 4, 2019 (LL #2).

13. After the witness gave his testimony the landlord stated that it sounds like the son is taking advantage of his mother but they have to be concerned for the peaceful enjoyment of the other tenants living in the building.

Witness Position

14. [REDACTED], witness for the landlord, testified that he is the Resident Manager for the building and that they have received complaints from other tenants in the building concerning the unit, [REDACTED]. He testified that he received a complaint from the tenant living in Unit [REDACTED], who lives directly underneath tenant1, around 1:00 a.m. on February 15, 2019 concerning the noise coming from unit [REDACTED]. When he received the complaint he went to the unit and knocked on the door. [REDACTED], tenant1's son who is living with tenant1 answered the door. [REDACTED] told tenant1's son that he just got a complaint about the noise coming from their unit and he was wondering if they could keep the noise down. He was giving them a warning. [REDACTED] said that tenant1's son was in a very aggravated state. He snapped at [REDACTED] and said he didn't want to be evicted like the tenant in the other unit that was evicted. Tenant1's son then closed the door.
15. [REDACTED] testified that on May 27, 2019 he received a call from the tenant who lives two doors down from tenant1 stating that there is a lady knocking on his door looking for a phone charger. He was told by the tenant with the complaint that when he refused the charger, the lady started calling him names and yelling at him and he yelled back at her. [REDACTED] said he went upstairs to check on the situation. When he arrived the lady in question was knocking on tenant1's door. He told the lady he was the manager and that he had a complaint and he asked her name. She told him her name and mentioned that she was staying at [REDACTED] for the weekend but she could not get a hold of [REDACTED]. [REDACTED] testified that the building is a secured building and this lady found a way into the building without a key. He escorted her out of the building. An hour later he got a call from the same tenant stating that the lady was knocking on his door again. He went upstairs again and this time the lady claimed that [REDACTED] let her in through the intercom but she was not answering the door. [REDACTED] went and found a phone charger for the lady and she was able to reach [REDACTED]. [REDACTED] let her into tenant1's unit. [REDACTED] stated that his concern was the fact that a stranger was let into the building and she started trouble with other tenants in the building and the lady claimed she was staying with tenant1.
16. [REDACTED] also testified that between February and May 2019 he received other complaints about noise from the tenant living in the unit underneath tenant1 but he does not have the times and dates. He also received complaints from tenants living on the same floor concerning tenant1's son. People would stop

him in the hallway and make a complaint and he received some complaints through text messages but he does not have the dates and times. He said a few tenants told him they felt unsafe and nervous with tenant1's son in the building because of his demeanor and attitude.

17. ██████ testified that on May 29, 2019 around 8:00 p.m. he received a call from the tenant living in unit ██████ concerning the shouting and yelling in Unit ██████. He said he told the tenant that there was not much he could do because it was not past 11:00 p.m. but if the noise continues past 11:00 p.m. to call the authorities. Also to keep him informed if the noise continued. He testified that after he received the complaint he went upstairs. He did not knock on the door but he observed the shouting about 20 feet from the unit.
18. ██████ further testified that he received another call from the tenant in Unit ██████ around 1:00 a.m. the next morning telling him that there was a lot more noise. There was shouting, they were banging furniture on the floor, and chairs were being moved around. He told the tenant to call the authorities. He said the tenant in unit ██████ called the police because shortly after 1:15 a.m. he had to let the police in the unit.

Analysis

19. I have reviewed the testimony and evidence of the landlord and the witness in this matter. As far and I can see there are 2 issues that need to be addressed: (i) is the notice issued by the landlord valid; and (ii) is the landlord granted vacant possession. I accept the testimony of the witness that on three or four occasions he had to go to tenant1's unit because of the complaints he received. On at least two occasions he received complaints from the tenant who lives in the unit underneath tenant1 about the noise coming from the unit and on one occurrence the police were called. I also find the witness received two complaints on the same day from another tenant who lives on the same floor as tenant1, concerning a lady knocking on his door. The lady was yelling at the tenant. When the witness was called the second time concerning the knocking on the door, it was determined the lady was let into the building by someone in tenant1's unit.
20. Section 10.(1) 7.(b) doesn't allow for the tenant to unreasonably interfere with the rights of the landlord and other tenants in the residential premises. As the resident manager had been called to tenant1's unit on a few occasions concerning the noise from the unit and guests of tenant1 knocking on the door of another tenant in the building, tenant1 is interfering with the rights of other tenants in the building. I find the landlord had grounds to terminate the tenancy under section 24 of the Act and the notice is a valid notice.

21. Section 24(2) 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 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

22. The claim for vacant possession succeeds. The landlord is awarded costs associated with the enforcement of the Possession Order by the High Sheriff of NL.

Issue 2: Hearing Expenses - \$20.00

23. 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

24. The landlord paid an application filing fee in the amount of \$20.00. The landlord is seeking this cost.

Analysis

25. The cost the landlord 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 tenant1 is responsible to cover the cost of the hearing expenses in the amount of \$20.00.

Decision


26. Tenant1 shall pay the landlord's hearing costs in the amount of \$20.00.

Summary of Decision

25. The landlord is entitled to the following:

- a) Hearing expenses\$20.00
- b) Vacant Possession of the rented premises;
- c) Any cost incurred should the landlord be required to have the Sheriff enforce the attached Order of Possession.

July 23, 2019
Date


Residential Tenancies Section