

Residential Tenancies Tribunal

Decision 19-0466-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:10 p.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 the tenant, did not attend the hearing. [REDACTED] was represented by [REDACTED].

Preliminary Matters

4. The landlord called the following witness:
 - a. [REDACTED], an employee of [REDACTED] who lives in the building

Issues before the Tribunal

5. The landlord is seeking the following:
 - a. Vacant possession of the rental premises;
 - 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 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

8. 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 the tenant contravenes the Act by interfering with the rights of the other tenants.

Landlord Position

9. The landlord stated that the tenant was living in the unit when the company purchased the building a couple of years ago. There was a one year lease with the previous owner and they have renewed the lease each year. The rent is set at \$980.00 per month due on the 1st of each month. The landlord testified that they served the tenant with a termination notice under section 24, peaceful enjoyment, on May 23, 2019 to vacate on May 31, 2019 by posting the notice on the door of the unit. The notice was served because of the complaints they were receiving from tenants in the building and their staff that visited the building. The complaints were concerning the smell of urine and feces coming from the unit. She said when they would receive a complaint from a tenant they would have an employee verify the smell. They would then send a letter to the tenant informing him they received a complaint.
10. The landlord testified that the first complaint was received in September 2017. There was a plumbing leak in the unit. When the maintenance staff went to the unit there was a foul odour and the staff said the unit was in a deplorable condition. Also there was garbage stored in one room. She said they gave a notice to the tenant to have the unit cleaned and sanitized. After giving the notice to clean, an inspection was completed and the tenant attempted to clean the unit.
11. The landlord further testified that the next time they sent a letter to the tenant was in July 2018 due to the complaints from other tenants concerning the smell from the tenant's unit. In November 2018 another letter was sent to the tenant concerning the complaints about the odour coming from the unit. She testified that tenant living in the unit above the tenant was complaining that the smell was coming up through to her unit. The maintenance workers had to seal the cupboards and everything in the unit above the tenant's unit due to the smell as they were trying to alleviate the smell that was permeating up to her unit. They used an oil based paint inside the cupboards. The workers are constantly

doing work on the unit trying to redirect the air flow from the upstairs tenant unit.

12. The landlord also testified that they sent letters to the tenant on March 12 and 18, 2019, April 11, 2019, May 2, 2019 and June 6, 2019 plus they have received at least two complaints a week either from the person living above the tenant or the surrounding neighbors concerning the smell coming from the tenant's unit. These people have complained to the onsite staff members; they have called into the office and spoke with the landlord and her co-workers or they have called head office. The landlord submitted copies of the letters that were sent to the tenant (LL #2).

Witness Position

13. [REDACTED], witness and employee of [REDACTED], who lives in the building, testified that at least twice a week he gets complaints from other people living in the building concerning the smell coming from the tenant's unit. He said he has been living in the building since September 2018 and he has walked by the tenant's unit at least 4 times and he could smell urine. The smell is very strong. [REDACTED] also testified that he had to seal the cabinets in the unit above the tenant's unit to try and stop the smell from getting into the unit.

Tenant Position

14. The tenant's representative acknowledges that they have received letters from the landlord concerning complaints the landlord has received and they received the termination notice. He testified that he does laundry every day and he cleans the unit with oxiclean. He said he can't prove that there is no smell in the unit. His father is elderly and disabled. It is possible that he does not smell something but he doesn't think there is a smell coming from the unit. The representative said it is subjective; you might smell something and another person may not smell the same thing.
15. The representative testified that in September 2017 his father was keeping garbage in one of the rooms because the representative was not at home.

Analysis

16. I have reviewed the testimony and evidence of the landlord, the witness and the tenant's representative 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. Based on the evidence presented and the testimony of the landlord and the witness I find there is an

odour coming from the tenant's unit. The neighbouring tenants and the tenant living in the unit above the tenant are complaining about the smell on a regular basis.

17. 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 landlord and the employee of the landlord living in the unit are receiving complaints on a regular basis concerning the smell coming from the unit, the tenant 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.
18. 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 is valid as it contains all of the required information to serve on the tenant and the notice was served in accordance with the Act.

Decision

19. 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

20. 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

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

Analysis

22. 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 the tenant is responsible to cover the cost of the hearing expenses in the amount of \$20.00.

Decision

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

Summary of Decision

24. 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 19, 2019
Date


Residential Tenancies Section