

Residential Tenancies Tribunal

Decision 19-0530-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:25 a.m. on August 22, 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.

Preliminary Matters

4. The address of the rental unit should read [REDACTED] not [REDACTED].
5. The tenant was not present or represented at the hearing. Prior to the hearing I called the telephone number for the tenant but I was unable to reach him. 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 the 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.

6. The affidavits of service submitted by the landlord show that the application for Dispute Resolution was sent by registered mail on July 23, 2019 and was signed for on July 24, 2019. Also the tenant was personally served with a copy of the application on July 25, 2019. The tenant has had 26 days to provide a response. As the tenant 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 his absence.

Issues before the Tribunal

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

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
9. Also relevant and considered in this case are Sections 18, 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

10. 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 on January 31, 2019.

Landlord Position

11. The landlord testified that the tenant moved into the unit on June 29, 2017 on a month to month tenancy with rent set at \$650.00 per month due on the 1st of each month. On January 31, 2019 he personally served a termination notice (LL #1) on the tenant to vacate on June 31, 2019. The notice that was served did not state a section of the Act. The tenant is still living in the unit.

Analysis

12. I have reviewed the testimony and the evidence of the landlord. I have determined that there is one issue that needs to be addressed; is the termination notice valid. When a landlord is terminating a tenancy a landlord is required to give at least a 3 month termination notice to vacate for no reason as per section 18.(2)(b). Under section 34 (d) of the Act, the termination notice

shall state the section of the Act under which the notice is given. After reviewing the termination notice I find the notice allowed the required amount of time but it did not state the section as to why the notice was given. As the termination notice did not state the section of the Act, the termination notice is invalid.

Decision

13. The landlord's claim for vacant possession fails.

Issue 2: Hearing Expenses - \$33.11

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*.

Landlord Position

15. The landlord testified that he paid an application filing fee in the amount of \$20.00 and \$13.11 for the registered mail. The landlord is seeking these costs.

Analysis

16. The cost the landlord incurred to make the application and serve the application are considered reasonable expenses as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. However, as the landlord's claim has been unsuccessful, the claim for hearing expenses fails.

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17. The landlord's claim for hearing expenses fails.

Summary of Decision

18. The landlord's claim for vacant possession and hearing expenses is unsuccessful.

August 28, 2019

Date


Residential Tenancies Section