

Residential Tenancies Tribunal

Decision 19-0632-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:05 a.m. on September 3, 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], hereafter referred to as the landlord, did not attend the hearing but he was represented by [REDACTED] and [REDACTED].

Preliminary Matter

4. [REDACTED] a representative for the tenant attended the hearing.

Issues before the Tribunal

5. The tenant is seeking the following:
 - a. Validity of the termination notice;
 - b. Hearing expenses.
6. The landlord is seeking the following:
 - a. Vacant possession of the rental premises;
 - b. Hearing expenses.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.

8. Also relevant and considered in this case are Sections 10, 22, 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/Validity of the notice

9. 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 22 of the Act.

Tenant Position

10. The tenant stated that he moved into the unit on October 1, 2009 with rent set at \$600.00 per month due on the 1st of each month. The current rate of rent is \$750.00 per month. The tenant testified that a Landlord's Request for Repairs (T#2) was posted on his door on July 11, 2019 to have the interior decluttered by August 15, 2019. Then on August 7, 2019 a termination notice (T #1) was posted to the door. The notice stated he had to vacate on August 14, 2019. He disagrees with both of the notices. The termination notice the tenant presented was not signed by the landlord.

Landlord Position

11. The landlord's representatives testified that the landlord gave the tenant a notice on July 11, 2019 to have the unit decluttered in a month and that Harvey's Oil will be entering the property on July 17, 2019. The representatives said that the landlord served a termination notice on the tenant but the notice he served was not signed by the landlord. They presented a photograph of the termination notice (LL # 1).

Analysis

12. I have reviewed the testimony and the evidence of the tenant and the landlord's representatives. I find there is one issue that needs to be addressed; is the termination notice a valid notice. Section 22 requires that the tenant be given a notice to make the repairs and if the repairs are not carried out the landlord can give a notice to move out not less than 5 days. I find that the landlord gave the tenant a Landlord's Request for Repairs on July 11, 2019 to have work completed by August 15, 2019. I also find the landlord posted a termination notice on the door on August 7, 2017. This notice was served before the time had expired to have the work completed. Further the termination notice did not contain the landlord's signature as required by Section 22.(3)(a) of the Act. Therefore, the termination notice is not a valid notice.

Decision

13. The termination notice is not a valid notice and the landlord's claim for vacant possession fails.

Issue 2: Hearing Expenses

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.

Landlord Position

16. The landlord paid an application filing fee in the amount of \$20.00, \$13.11 for registered mail and \$21.91 for development of photographs for a total of \$55.02. The landlord is seeking these costs.

Analysis

17. The cost the tenant incurred to file the application and the costs the landlord incurred to make the application, develop the photographs and send the registered mail are considered reasonable expenses as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. As the landlord's claim was unsuccessful and the tenant's claim was successful, the landlord shall pay the tenant's hearing expenses in the amount of \$20.00.

Decision

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

Summary of Decision

19. The tenant is entitled to the following:

- a) Hearing expenses\$20.00
- b) The termination notice dated August 7, 2019 is not a valid notice
- c) The claim for vacant possession fails.

September 6, 2019
Date

Residential Tenancies Section