

Residential Tenancies Tribunal

Decision 19-0701-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:20 a.m. on October 24, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED] represented by [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The respondent, [REDACTED], hereafter referred to as the tenant, did not attend the hearing.

Preliminary Matters

4. The tenant was not present or represented at the hearing. 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.
5. The affidavit of service submitted by the landlord shows that the application for dispute resolution was sent by registered mail on September 20, 2019. The registered mail was returned to the landlord on October 20, 2019. Under section 42.(6) where an application is sent by registered mail or express post, it shall be considered to have been served on the fifth day after mailing. 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 her absence.

Issues before the Tribunal

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 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

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 18(2) of the Act.

Landlord Position

10. The landlord testified that the tenant moved into the unit on November 1, 2015 for a 12 month term with rent due on the 1st of each month. When the term ended the tenancy converted to a month to month tenancy. The current rate of rent is set at \$765.00 per month. She also testified that a termination notice (LL #2) under Section 18.(2) of the *Residential Tenancies Act, 2018*, was posted on the door of the rental unit on April 30, 2019 to vacate on July 31, 2019. No reason is required when a three month notice is given. To the date of the hearing the tenant still resides in the unit.

Analysis

11. I have reviewed the testimony and the evidence of the landlord and I find that the landlord served a termination notice under section 18. (2) of the Act on the tenant on April 30, 2019 by posting a copy of the notice on the door of the rental unit. The effective date of the notice was July 31, 2019. Section 18.(2) does not require a reason as to why the tenancy is being terminated. I also find the notice allowed the required amount of time and contains all of the necessary information to serve on the tenant as per sections 18.(2) and 34 of the Act. The notice was served in accordance with Section 35 of the Act. Thus the notice is a valid notice and the claim for vacant possession succeeds.

Decision

12. The landlord's claim for vacant possession succeeds. The landlord is further awarded costs associated with the enforcement of the Possession Order by the High Sheriff of NL should the landlord require the Sheriff to enforce the Order of Possession.

Issue 2: Hearing Expenses - \$29.50

13. 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

14. The landlord paid an application filing fee in the amount of \$20.00 and \$9.50 (LL #3) for registered mail for a total of \$29.50. The landlord is seeking these costs.

Analysis

15. The costs the landlord incurred to make the application and to have the application served 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 successful, the tenant is responsible to pay the landlord's hearing expenses in the amount of \$29.50.

Decision


16. The tenant shall pay the landlord's hearing expenses in the amount of \$29.50.

Summary of Decision

17. The landlord is entitled to the following:

- a) Hearing expenses \$29.50
- 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.

October 28, 2019
Date


Residential Tenancies Section