

Residential Tenancies Tribunal

Decision 19-0723-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:05 p.m. on October 21, 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, participated in the hearing by conference call.

Preliminary Matters

4. The landlord called the following witnesses who attended by conference call:
 - a. [REDACTED] – the tenant living in the unit next to the tenant;
 - b. [REDACTED] – the tenant living in unit [REDACTED] 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 10, 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. A successful order 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 signed a one year term to begin on July 1, 2019 with rent set at \$800.00 per month due on the 1st of each month. She moved in on July 10, 2019. The landlord testified that shortly after the tenant moved into the unit they started receiving complaints from other tenants in the building about the noise coming from the tenant's unit. Also they received a complaint that the tenant had taken the top of the coin operated dryer. They served a termination notice under section 24 of the Act on the tenant on August 19, 2019 to vacate on August 25, 2019.
10. The landlord testified that the tenant presented them a petition signed by the other tenants in the building. The petition stated that the tenant was not causing noise in the building. When they received the petition they called all of the other tenants in the building. Some of the tenants said they never heard any noise, some said they have heard the noise and one said that he has heard the noise from the tenant's unit but he was forced to sign the petition. This tenant did not want to appear as a witness at the hearing.

Witness Position

11. [REDACTED], witness for the landlord, testified that he lives in the unit next to the tenant. About 3 or 4 weeks after the tenant moved into the building the noise started. There would be slamming doors, yelling and people running up and down the hallway once every 5 minutes. It would start around 11 at night and continue until 5 or 5:30 in the morning. Sometimes they would bang the door so hard that everything would shake in his entertainment center. He said

that he cannot get any sleep or rest because of the noise. He also testified that there has been noise in the building ever since he moved in 2 years ago but it has gotten worse since this tenant moved in.

12. [REDACTED] further testified that shortly after he started complaining to the landlord about the noise, the tenant approached him with a petition to sign. The petition stated that the tenant was not making noise or causing a disturbance in the building. He signed the petition because he felt he was forced to sign it. He was hoping that the noise issue would go away. But if he had his time back he would not have signed the petition.
13. [REDACTED] testified that he saw the tenant and another person remove the coin operated dryer from the building and he heard them beat it up.
14. [REDACTED], witness for the landlord, testified that she moved into unit [REDACTED] on October 4, 2019. Since she moved in she has heard noise in the day time and early in the morning between 1 –and 3 a.m. from unit [REDACTED]. There would be doors banging and people yelling. She said she doesn't hear it every night but she hears the noise quite often. It is often enough that it is making her feel nervous staying in the unit. She said she heard noise last night. She is assuming it is coming from unit [REDACTED].

Tenant Position

15. The tenant testified that she and her boyfriend moved into the unit on July 10, 2019. She said that [REDACTED], the witness, is lying. She can hear noise from another unit. The police were called to another unit because of the noise.

Analysis

16. I have reviewed the testimony and evidence of the landlord, the tenant and the witnesses in this matter. I have determined that there are 2 issues that need to be addressed; (i) does the landlord have grounds to terminate the tenancy; and (ii) is the termination notice a proper notice. I find that the testimony of the witness, [REDACTED], is believable. There are a lot of doors banging in the tenant's unit late at night and the tenant and the people the tenant is letting into the unit are running up and down the hallway late at night yelling. I also find that since [REDACTED] moved into the building she has heard doors banging and people yelling in the early hours of the morning to the point she feels nervous staying in her unit. The tenant is interfering with the peaceful enjoyment of the other tenants living in the building.
17. Section 10.(1) 7.(a) doesn't allow for the tenant to unreasonably interfere with the rights of the landlord and other tenants in the residential premises. The

tenant was interfering with the rights of the witnesses who live in the building. The landlord had grounds to terminate the tenancy under section 24 of the Act as there are doors banging late at night and the tenant and the people the tenant is letting into the unit are running up and down the hallway late at night yelling.

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 contains all of the required information to serve on the tenant and the notice was served in accordance with the Act.

Decision

19. 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 - \$70.00

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 and \$50.00 (LL #4) to have the application for dispute resolution served on the tenant for a total of \$70.00. The landlord is seeking these costs.

Analysis

22. 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 \$70.00.


Decision

23. The tenant shall pay the landlord's hearing expenses in the amount of \$70.00.

Summary of Decision

24. The landlord is entitled to the following:
- a) Hearing expenses \$70.00
 - 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.

November 1, 2019
Date


Residential Tenancies Section