

Residential Tenancies Tribunal

Decision 19-0728-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:20 a.m. on November 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, 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 first hearing was scheduled for October 3, 2019. At that time both the landlord and tenant agreed to postpone the hearing until November 21, 2019 @ 11:00 a.m. Both the landlord and tenant were served with a Notice of Rescheduled Hearing on October 3, 2019. As the tenant was properly served with the notice of rescheduled hearing, 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 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

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 where the tenant contravenes the Act by not cleaning the premises.

Landlord Position

10. The landlord testified that the tenant moved into the unit on December 1, 2004 for a one year term with rent due on the 1st of each month. When the term ended the tenancy converted to a month to month tenancy. On August 22, 2019 the maintenance staff brought to their attention the condition of the tenant's unit. They said the unit was very dirty. That same day a letter was served on the tenant requesting the unit be brought to an acceptable standard by Wednesday, August 28, 2019. An inspection was carried out on August 29, 2019 and the unit had not been cleaned. A termination notice under section 22 of the Act was hand delivered to the tenant on August 29, 2019 to vacate the unit by September 4, 2019.
11. The landlord further testified that the tenant did not move out on the notice and a hearing was held on October 3, 2019. At the hearing the landlord and the tenant agreed to a postponement allowing the tenant time to clean the unit. On November 18, 2019 a notice to enter the property was posted on the tenant's door to enter on November 19, 2019. When the maintenance staff went into the unit on November 19, 2019 the unit was not cleaned. They took photographs of the unit at that time.

12. The landlord submitted into evidence the letter to the tenant dated August 22, 2019 (LL #2); a copy of the termination notice dated August 29, 2019 (LL #1); photographs of the unit taken on August 22, 2019 (LL #3); and a copy of the notice to enter dated November 18, 2019 and the photographs taken on November 19, 2019 (LL #4).

Analysis

13. I have reviewed the testimony and the evidence of the landlord. I have determined that there are 2 issues that need to be addressed; (i) does the unit need to be cleaned; and (ii) is the termination notice a proper notice. After reviewing the photographs taken on August 22, 2019 the unit was very dirty and needed to be cleaned. The landlord did not present any photographs taken on August 29, 2019 but the photographs taken on November 19, 2019 indicates that the tenant did not make an attempt to try and clean the unit. Under section 10.(1)2 the tenant is required to keep the premises clean. As the tenant did not clean the unit the landlord had grounds to give a termination notice under section 22 of the Act.
14. Section 22.(2) requires that a notice be given not less than 5 days if the tenant has contravened condition 2 in subsection 10(1). As determined in paragraph 13 above the tenant did not clean the unit by August 28, 2019, the date the landlord gave her to have the unit cleaned. After reviewing the notice I find the notice allowed the required amount of time and contains all of the necessary information to serve on the tenant as per sections 22.(3) and 34 of the Act. The notice was served in accordance with Section 35 of the Act.

Decision

15. 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 4: Hearing Expenses - \$20.00

16. 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

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

Analysis

18. 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*. As the landlord's claim was successful, the tenant is responsible to pay the landlord's hearing expenses in the amount of \$20.00.

Decision

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

Summary of Decision

20. 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.

November 25, 2019
Date


Residential Tenancies Section