

Residential Tenancies Tribunal

Decision 19-0787-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:20 p.m. on November 13, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], represented by [REDACTED] and [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 notice of this hearing was sent by registered mail on October 15, 2019. The tenant did not pick up the registered mail. Under section 42.(6) of the Act an application sent by registered mail shall be considered to have been served on the fifth day after mailing. As the notice was sent on October 15, 2019, it is considered to have been served on October 20, 2019 and the tenant has had 23 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

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 of the Act.

Landlord Position

10. The landlords testified that the tenant moved into the unit on September 30, 1998 on a month to month tenancy with rent due on the 1st of each month. The current rate of rent is set at \$370.00. A termination notice (LL #1) under Section 18 of the *Residential Tenancies Act, 2018*, was sent by registered mail on April 17, 2019 with an effective date of July 31, 2019. Under section 18.(2)(b) no reason is required. To the date of the hearing the tenant still resides in the unit.

Analysis

11. Section 18.(2)(b) requires that a notice under this section be given not less than 3 months before the end of a rental period where the residential premises is rented from month to month. The notice was sent by registered mail on April 17, 2019 to vacate on July 31, 2019. 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 18.(9) and 34 of the Act. The notice was served in accordance with Section 35 of the Act.

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 - \$20.00

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. The landlord is seeking this cost.

Analysis

15. 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 cover the cost of the hearing expenses in the amount of \$20.00.

Decision


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

Summary of Decision

17. 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 18, 2019
Date


Residential Tenancies Section