

Residential Tenancies Tribunal

Decision 19-0957-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:05 a.m. on January 28, 2020 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereafter referred to as the tenant, participated in the hearing.
3. The respondent, [REDACTED], hereafter referred to as the landlord, participated in the hearing.

Preliminary Matters

4. The landlord called Constable [REDACTED], Badge No. [REDACTED] with the Royal Newfoundland Constabulary (RNC) as a witness.
5. The landlord discontinued the claim for payment of rent.

Issues before the Tribunal

6. The tenant is seeking the following:
 - a. Validity of a termination notice;
 - b. Hearing expenses.

7. The landlord is seeking the following:
 - a. Vacant possession of the rental premises.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
9. Also relevant and considered in this case are Sections 10, 24, 34 and 35 of the Act and the costs eligible to be awarded are identified in *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 termination notice

10. 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 landlord.

Landlord Position

11. The landlord stated that the tenant moved into the unit on May 1, 2018 for a one year term for the period May 1, 2018 – April 30, 2019 with rent set at \$725.00 per month due on the 1st of each month. When the term expired, the tenancy converted to a month to month tenancy. He testified that around 2:11 a.m. on December 13, 2019 the tenant called him and told him she had broken the key off in the door. She was very vocal and he was also vocal. She threatened him that if he didn't go to the unit she would beat the windows out. He decided to go to the unit but before he left his house his wife recommended that he record everything. He went to the unit. When he was at the unit the tenant was up in his face and she had the broken key in her hand. He unlocked the door and the tenant pushed the door opened. He reached in to get his key. As he reached in to get his key the tenant pushed him out the door. He left the unit. As he was walking towards his truck, the tenant came up behind him and pushed him again. He went home. He told his wife what had happened and she advised him to go to the police. He went to the police station and he gave his statement along with a copy of what he recorded. The next day he served a notice to inspect the unit on December 14, 2019. On the advice of the police officer, his wife and a police officer went to do the inspection. When they were

at the unit his wife served the tenant with a termination notice to vacate on December 20, 2019.

12. The landlord further testified that between December 13 and 16, 2019 he received threatening text messages from the tenant. Copies of these messages were sent to the police. Based on his statement, the recording and the copies of the text messages the police laid 2 charges against the tenant. The charges laid against the tenant were uttering threats and assault. He stated that he cannot communicate on a civil level with a tenant he is afraid off what she is capable of doing. The landlord submitted a copy of the termination notice (LL #1) dated December 14, 2019 and a copy of the text messages from the tenant between December 13 and 16, 2019 (LL #2).

Witness Position

13. Constable [REDACTED], Police Officer with the RNC and witness for the landlord, testified that the landlord attended the RNC headquarters in the early morning of December 13, 2019. He gave a statement indicating he was assaulted by the tenant. In his statement he indicated he went to the tenant's unit because the tenant was locked out of her unit. An altercation took place which the landlord recorded, the landlord's phone was knocked out of his hand and threats were uttered by the tenant. Within a few days following the incident the landlord sent copies of text messages he had received from the tenant. Based on the statement provided and the evidence given it was determined that there was enough grounds to lay 2 criminal charges against the tenant. The charges laid were for common assault and uttering threats. Both of these charges at still before the Court.
14. Constable [REDACTED] testified that he submitted an e-mail to all of the officers working in that general area to keep an eye on the landlord's residence and the rental unit based on the concerns of the landlord. The landlord was worried that there may be some retaliation. Constable [REDACTED] said it was suggested to the landlord that a police officer or a third should attend the unit with the landlord if the landlord needs to enter the unit.

Tenant Position

15. The tenant acknowledges she received the termination notice on December 14, 2019 and that she sent the text messages to the landlord. She testified that on December 13, 2019 when she came home she broke the key off in the lock. She called the landlord and told him. He said a bunch of twisted things to her such as you can stay in the snow for all he cares. She said she threatened him that she would call the police if he didn't come to the unit and that she would beat his windows out to show him how cold it is outside. The landlord came to the unit. When he arrived he put the camera in her face and

asked her to show him how she cracked the key off. She knocked the phone out of his hand. When he bent down to pick up the phone, she bent down to speak into the phone. At that time he physically pushed her to the ground and kicked her. She got up and went to punch him but her friend stopped her from doing it. At that point the landlord said he will be seeing her and he left.

16. The tenant testified that the landlord told her that she had the brain of a 13 year old to crack the key off. He also told her on the phone that he was getting rid of her because she has too much drama. He is not dealing with a tenant with that many problems. She told the landlord that if he came near her, she will pepper spray him and she will hurt him. She doesn't trust him. She also testified she didn't sleep for days because she didn't know what the landlord was capable of doing and she doesn't know what he can do.

Analysis

17. I have reviewed the testimony and evidence of the landlord, the tenant and the witness in this matter. I find that there is one issue that needs to be addressed; did the tenant interfere with the rights of the landlord. I find that an altercation took place on December 13, 2019 between the landlord and tenant and the tenant made threats to the landlord that she was going to damage property belonging to the landlord. The tenant acknowledges that she sent text messages to the landlord after the altercation. Some of the text messages contained threatening comments and some had derogatory comments about the landlord and his family. I also find that the landlord filed a complaint with the police against the tenant. Based on his statement, the recording of the altercation and copies of the text messages, the police laid 2 charges against the tenant.
18. 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 landlord as the tenant threatened to damage the landlord's property on the night of the altercation and she sent threatening text messages to the landlord. The landlord had grounds to terminate the tenancy under section 24 of the Act.
19. 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. The termination notice is a valid notice.

Decision

20. The 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

21. 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

22. The tenant paid \$20.00 to file the application for Dispute Resolution and the tenant is seeking this cost.

Analysis

23. The cost the tenant incurred to file 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 for vacant possession has been successful, the tenant's claim for hearing expenses fails.


Decision

24. The tenant's claim for hearing expenses fails.

Summary of Decision

25. The landlord is entitled to the following:
- a) Vacant Possession of the rented premises;
 - b) Any cost incurred should the landlord be required to have the Sheriff enforce the attached Order of Possession.

January 31, 2020
Date


Residential Tenancies Section