

Residential Tenancies Tribunal

Decision 20-0021-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:30 a.m. on February 10, 2020 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED], hereafter referred to as landlord1 participated in the hearing and [REDACTED] hereafter referred to as landlord2 did not attend the hearing but he was represented by [REDACTED].
3. The respondent, [REDACTED], hereafter referred to as the tenant, did not attend the hearing.

Preliminary Matters

4. Landlord1 amended the claim for damages from \$970.00 to \$663.32.
5. The tenant was not present or represented at the hearing. Prior to the start of the hearing I called the number on file but I was unable to reach her. 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.
6. The affidavit of service submitted by the landlord shows that the notice of the hearing was personally served on the tenant on January 28, 2020. The tenant has had 12 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 landlords, I proceeded with the hearing in her absence.

Issues before the Tribunal

7. The landlords are seeking the following:
 - a. Vacant possession of the rental premises;
 - b. Compensation for damages in the amount of \$663.32;
 - c. Hearing expenses.

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

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. Landlord1 testified that the tenancy began on December 1, 2018 on a month to month tenancy with rent set at \$850.00 per month due on the 1st of each month. The tenant and her boyfriend did not move into the unit until sometime in October 2019. The tenant was told that her boyfriend has no permission to live there. The tenant told her that he is only going to be there for a few days as he is getting his own place. He is still living in the unit. Shortly after the tenant moved in she received a call from the downstairs tenant complaining about the people constantly coming and going all hours of the day and night to the upstairs unit. He also complained about the noise coming from the upstairs unit in the early hours of the morning. There would be people walking heavy on the floor and you could hear music. The music was louder than the normal level. She said the tenants in the downstairs unit wear headphones to bed. Since she received the complaint she has been in contact with the downstairs tenant on a regular basis about the noise. She further testified that she has observed people going to the door for about 2 minutes and leaving. She would sit in her car a couple of doors up from the rental unit and observe the people coming and going. She would do this at least once a week. The landlord said

she has gone to the tenant's unit a couple of times and spoke with the tenant and her boyfriend about the complaints. The unit is a hangout. The tenant said the thumping on the floor is that her boyfriend has a disability and he walks heavy on the floor. The boyfriend said that he was selling cigarettes. She told him that he is not selling any product from her property. On November 20, 2019 she gave the tenant a warning letter concerning the interference of peaceful enjoyment re: the people coming and going to the unit day and night. After she gave the letter on November 20, 2019 there were still people coming and going all hours of the day and night and the downstairs tenant said there was still noise in the early hours of the morning. On December 17, 2019 she posted a termination notice on the door of the unit to vacate on December 23, 2019. The landlord submitted a copy of the termination notice (LL #2).

12. Landlord1 testified that on [REDACTED] at 3:00 a.m. she received a call from the downstairs tenant asking her to call the police because of the noise upstairs. There were people screaming. The downstairs tenant doesn't like to call the police. The landlord called the police. The police called her back and told her they went to the unit. They spoke with the tenant but the tenant would not let them in the unit. They also said the tenant was not very cognizant.

Analysis

13. I have reviewed the testimony and evidence of the landlord in this matter. I find that there is one issue that needs to be addressed; did the tenant interfere with the peaceful enjoyment of the tenants living in the basement unit and the rights of the landlord. I accept the landlord's testimony that there is noise coming from the upstairs unit in the early hours of the morning and the downstairs tenants are wearing headphones to bed to block the noise. I also accept the testimony that the tenant's boyfriend is selling a product from the unit and there are people constantly going to the tenant's door all hours of the day and night.
14. 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 peaceful enjoyment of the downstairs tenants as there is noise coming from the upstairs unit early in the morning and there are people constantly coming to the unit all hours of the day and night. The tenant is also interfering with the rights of the landlords as the tenant's boyfriend is selling a product from the unit. The landlords had grounds to terminate the tenancy under section 24 of the Act.
15. 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

16. 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: Compensation for damages - \$663.32

Landlord Position

17. The landlord testified that the entrance door was installed in January 2019 at a cost of \$356.99 for the door and \$200.00 for the labour. On December 16, 2019 when she was at the unit she noticed the door was damaged. It looked like it was kicked in. The door was split, there was a dent in the door and the door box was damaged. The door has to be replaced. She doesn't have an estimate on the cost to have the door installed but they paid around \$200.00 to have the door installed. She also testified that she purchased a new lock when she had the door installed in 2019. The tenant changed the lock in October and provided them with a key to the unit. On December 16, 2019 when she noticed the door was damaged, the lock looked like it was also damaged. She said the tenants changed the lock again because on one occasion when she was at the unit she tried to unlock the door but the key didn't work.
18. The landlord submitted a copy of the receipt from Kent for the purchase of the door (LL # 4), a copy of the receipt from Tulk's Glass Key Shop Ltd. for the purchase of the lock (LL #6), a copy of the Rental Premises Condition Report dated December 20, 2018 (LL #7) and photographs of the door (LL #6). The photographs were taken in early January 2020.

Analysis

19. I have reviewed the testimony and the evidence presented and I find that there is one issue that needs to be addressed; does the door and lock need to be replaced. I find that the door was installed in January 2019. Based on the photographs landlord1 presented of the door, I find that the door is damaged and needs to be replaced. The amount the landlords are claiming for the labour to replace the door is reasonable. A door is a depreciable item with a life expectancy of 15 years. As the door is 1 year old, the landlords are awarded \$519.82 ($\356.99 for the door + $\$200.00$ for labour = $\$556.99 \div 15$ years =

\$37.13 per year x 14 years remaining = \$519.82) for replacement of the door. With respect to replacement of the lock. Landlord1 did not submit any evidence to substantiate that the lock to the door was damaged. The changing of exterior locks is considered an expense that a landlord would incur to secure the premises after a tenant vacates. Therefore, the claim for replacement of the lock fails.

Decision

- 20. The claim for damages succeeds in the amount of \$519.82 as per the following:
 - a) Compensation for replacement of the door\$519.82

Issue 3: Application for Security Deposit

- 21. Under the authority of Section 47.(j) the director may authorize a landlord to offset money a tenant owes to the landlord against money the landlord owes to the tenant. Further under subsection (m), the director has the authority to determine the disposition of the security deposit.

Landlord Position

- 22. Landlord1 testified a \$598.55 security deposit was paid in December 2018.

Analysis

- 23. A security deposit was paid in December 2018. As the landlords have been successful in the claim for the compensation for damages, they shall retain \$539.82 from the security deposit as outlined in this decision and order.

Decision

- 24. The landlords shall retain \$539.82 from the security deposit as outlined in this decision and attached order.

Issue 4: Hearing expenses

- 25. 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

26. The landlords paid \$20.00 to file the application for Dispute Resolution and the landlords are seeking this cost.

Analysis

27. The cost the landlords 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 landlords' claim has been successful, the tenant shall pay the landlords' hearing expenses in the amount of \$20.00.

Decision

28. The claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

29. The landlords are entitled to the following:

- a) Compensation for damages\$519.82
- b) Hearing expenses\$20.00
- c) **Less a portion of the security deposit.....(539.82)**
- d) Total owing to the landlords.....0
- e) Vacant possession of the property;
- f) Any cost incurred should the landlord be required to have the Sheriff enforce the attached Order of Possession.

February 18, 2020
Date


Residential Tenancies Section