

Residential Tenancies Tribunal

Decision 20-0090-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:25 p.m. on March 12, 2020 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereafter referred to as the landlord participated in the hearing. He was represented by Legal Counsel, [REDACTED].
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. I called the tenant 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.
5. The affidavit of service submitted by the landlord shows that the notice of the hearing was electronically served on the tenant on February 18, 2020. The tenant has had 22 days to provide a response. The landlord submitted a copy of the e-mail sent to the tenant on February 18, 2019 along with a copy of the rental agreement. The tenant provided her e-mail address in the rental agreement. 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 her absence.

Issues before the Tribunal

6. The landlord is seeking the following:
 - a. Vacant possession of the rental premises;
 - b. Payment of rent in the amount of \$1500.00;
 - c. 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 14, 19, 24, 34, 35 and 42 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

9. 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

10. The landlord testified that the tenant moved into the unit on December 18, 2019 for a 6 month term with rent set at \$750.00 per month due on the 1st of each month. Shortly after the tenant moved in there were vehicles coming and going to the tenant's unit all hours of the day and night. There would be slamming doors, yelling and screaming in the tenant's unit between 11:00 p.m. and 7:00 a.m. every night. The landlord started receiving complaints from the neighbors about the traffic going to the tenant's unit. He sent a text message to the tenant concerning these matters on January 4 and 9, 2019. The traffic and the noise continued. On January 14, 2020 he sent a letter to the tenant giving her notice that if the noise and the cars coming and going don't stop immediately, he will be giving her a termination notice to vacate. The traffic and the noise continued.

11. The landlord further testified that on January 26, 2020 he had a security camera installed. On January 27, 2020 at approximately 3:45 a.m. he saw two people go into the tenant's unit. A couple of moments after they entered the unit the yelling and shouting started. These are the same two people he heard arguing earlier that day about blowing each other's brains out. He felt unsafe in his unit. He left his unit around 4:00 a.m. and went to his parent's house. He has not stayed at his unit since that night. The only time he goes back to his unit is to do maintenance on the camera. He further testified that there was traffic coming and going to the tenant's unit all hours of the night as he can see from reviewing the security camera. On February 23, 2020 he received a message from his neighbor about someone around his property. He called the police. The police went to his unit. Since the police have been at the unit almost all of the activity has stopped. On March 4, 2020 at approximately 4:00 a.m. a couple of people arrived at the tenant's unit and they were trying to pick the lock. He contacted the police. Later he discovered it was the tenant trying to get into the unit.
12. The landlord testified that a termination notice under section 24 dated January 27, 2019 was personally served on the tenant on January 28, 2020 to vacate February 5, 2020. The landlord submitted a copy of the termination notice (LL #2).

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 landlord. I accept the landlord's testimony that there are people constantly going to the unit all hours of the day and night. I find that the landlord had to leave his unit because he felt unsafe in his unit due to the people coming and going and the noise coming from the tenant's unit.
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 landlord as there are people constantly going to her unit all hours of the day and night and there is yelling and shouting in the unit during the early hours of the morning. The landlord left his unit because he felt unsafe. The landlord 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: Payment of rent - \$1500.00

Landlord Position

17. The landlord testified that the tenant paid rent for the period December 18 – 31, 2019 on December 18, 2019. The rent for January 2020 was paid in two installments; a payment of \$375.00 was paid on January 6 and January 11, 2020. He has not received any monies towards the rent since January 11, 2020.

Analysis

18. I have reviewed the testimony and evidence of the landlord. I have determined that there is one issue that needs to be addressed; is rent owing. I find that the rent in the amount of \$750.00 has not been paid for the month of February 2020. Rent for March 2020 can only be awarded up and including the day of the hearing (March 12, 2020). The amount of rent owing for March 1 – 12, 2020 is \$295.08 ($\$750.00 \times 12 \text{ months} = \$9,000.00 \div 366 \text{ days} = \$24.59 \text{ per day} \times 12 \text{ days} = \295.08). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$24.59 beginning on March 13, 2020 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

19. The landlord’s claim for rent succeeds as per the following:

- a. Rent owing for February 2020.....\$750.00
- b. Rent owing for March 1 - 12, 2020\$295.08
- c. Total rent owing.....\$1045.08

- d. A daily rate beginning March 13, 2020.....\$24.59

Issue 3: Payment of utilities - \$25.00

20. The landlord testified that the tenant agreed to pay her own utilities. She did not have the power bill converted to her name until sometime in January 2020. The power bill for December 2019 was \$70.00. The landlord did not present a copy of the power bill. He had an agreement with the tenant that she would pay half of the \$70.00. She paid \$10.00 on January 11, 2020.

Analysis

21. I have reviewed the testimony and the evidence of the landlord. I have determined that there is one issue that needs to be addressed; is the tenant responsible for the payment of the utilities. Based on the rental agreement the tenant agreed to pay her own utilities. The tenant paid \$10.00 towards the power bill. However, the landlord did not present a copy of the power bill to show the cost of the bill. As the landlord did not present a copy of the power bill, the claim fails.

Decision

22. The claim for payment of the utilities fails.

Issue 4: Issue 3: Application for Security Deposit

23. 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

24. The landlord testified a \$375.00 security deposit was paid in December 2019.

Analysis

25. A security deposit was paid in December 2019. As the landlord has been successful in the claim for the payment of rent, he shall retain the \$375.00 security deposit as outlined in this decision and order.

Decision

26. The landlord shall retain the security deposit as outlined in this decision and attached order.

Issue 5: Hearing expenses - \$190.82

27. 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

28. The landlord is seeking the following costs:

- a. Application filing fee \$20.00
- b. Registered mail to serve the application \$12.82
- c. Process server to serve the termination notice \$70.00
- d. Process server to serve the application \$70.00
- e. Courier service to send documents to
Residential Tenancies x 3 \$18.00
- f. Total claim..... \$190.82

29. The landlord testified that he hired a process server to serve the termination notice and a copy of the application for dispute resolution. The copy of the application was posted on the door of the rental unit.

Analysis

30. The landlord hired a process server to serve a copy of the application. The application was posted on the door. This is not a method of service for serving an application for dispute resolution as per section 42 of the Act. The cost of the process server fails. The landlord also hired a process server to serve the termination notice. He incurred courier costs to send documents to the Residential Tenancies Office. The cost of the process server and the courier service would be normal costs associated with the carrying out of his business. The cost the landlord incurred to file the application and to send it by registered mail 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 has been successful, the tenant shall pay the landlord's hearing expenses in the amount of \$32.82 (\$20.00 filing fee + \$12.82 registered mail = \$32.82).

Decision


31. The claim for hearing expenses succeeds in the amount of \$32.82.

Summary of Decision

32. The landlord is entitled to the following:

- a) Payment of rent\$1045.08
- b) Hearing expenses.....\$32.82
- c) **Less the security deposit**(375.00)
- d) Total owing to the landlord\$702.90
- e) Vacant possession of the property;
- f) A daily rate of rent in the amount of \$24.59 beginning March 13, 2020 and continuing until the day the landlord obtains possession of the rental unit.
- g) Any cost incurred should the landlord be required to have the Sheriff enforce the attached Order of Possession.

March 25, 2020
Date


Residential Tenancies Section