

Residential Tenancies Tribunal

Decision 20-0267-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:20 a.m. on July 15, 2020 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 landlord1 and landlord2, respectively, participated in the hearing through a conference call.
3. The respondent, [REDACTED], hereafter referred to as the tenant, did not attend the hearing.

Preliminary Matters

4. The tenant filed an application in file no. [REDACTED] seeking validity of the termination notice. The hearing was scheduled for July 6, 2020. On July 3, 2020 the landlord's application was processed and a hearing date of July 6, 2020 was given. A conference call took place on July 6, 2020 between the tenant, the landlord1 and myself. During the conference call, the hearing was postponed until July 15, 2020 @ 11:00 a.m. as the landlord had not served the tenant with the claim. Both parties agreed to the new date. The tenant agreed at that time to waive his 10 day right of notification to 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.
5. The tenant was not present or represented at the hearing. Prior to the hearing I called the number on file for the tenant but I was unable to him.

6. The tenant's claim was dismissed as the tenant did not attend the hearing.
7. Landlord1 affirmed at the hearing that the application was served on the tenant by e-mail on July 6, 2020. As the tenant agreed on July 6, 2020 to waive his 10 day right to be notified of the hearing, I proceeded with the hearing in his absence.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a. Vacant possession of the rental premises;
 - b. Payment of rent in the amount of \$3000.00;
 - c. Late fees in the amount of \$75.00;
 - d. Compensation for damages in the amount of \$789.40;
 - e. Hearing expenses.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
10. Also relevant and considered in this case are Sections 10, 15, 19, 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: Payment of rent - \$3000.00

11. In determining an application for the payment of rent, the landlord is required to establish the rental rate and the payment record.

Landlord Position

12. Landlord1 testified that the tenant moved into the unit on August 1, 2015 for a one year term with rent set at \$1500.00 per month due on the 1st of each month. The tenancy is currently month to month. The rent was paid in full up to May 2020. Since the tenant paid May's rent on May 12, 2020 they have not received any monies towards the rent. Landlord1 submitted a copy of the rent ledger for the period March 1, 2018 – July 13, 2020 (LL #2).

Analysis

13. I have reviewed the testimony and evidence of landlord1 and I have determined that there is one issue that needs to be addressed; is rent owing. I find that the rent was paid in full up to May 2020. Since May the tenant has not paid any

monies towards the rent. Rent is in arrears for the months of June and July 2020 in the amount of \$3000.00; \$1500.00 for each month.

Decision

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

- a. Rent owing for June 2020\$1500.00
- b. Rent owing for July 2020.....\$1500.00
- c. Total rent owing.....\$3000.00

Issue 2: Late fees - \$75.00

Landlord Position

15. Landlord1 testified that they are seeking payment of late fees in the amount of \$75.00 as the rent has been in arrears since June 2020.

Analysis

16. The rental arrears has been established in paragraph 13 above. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1st day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period. As the rent has been in arrears since June 2020 the late fees have exceeded the maximum amount of \$75.00.

Decision

17. The landlord’s claim for late fees succeeds in the amount of \$75.00.

Issue 3: Vacant Possession of the Rental Premises

18. 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 meeting obligations.

Landlord Position

19. Landlord1 testified that they received complaints about the condition of the property. A representative from the company visited the outside of the property on/or about May 6, 2020 to assess the situation and discovered that there was a lot of garbage, debris, tires, etc. in the back and front of the unit. On May 6, 2020 they served the tenant with a notice under material breach to have the

garbage, debris and tires removed from the property and have the property put back to its original condition in 48 hours. On May 13, 2020 when they inspected the outside of the property, the work was not completed. A termination notice under section 22 was served on May 14, 2020 by posting a copy on the door of the unit and sending a copy by e-mail. The tenant had to vacate the unit on May 20, 2020.

20. Landlord1 testified that on June 2, 2020 an inspection was carried out on the inside of the unit. While they were at the unit they posted a notice of suspected abandonment on the door as the tenant had not communicated with them in a few days and they had not received the rent for June 2020. On June 3, 2020 the locks were changed as they had not heard from the tenant. In the afternoon of June 5, 2020, the tenant visited the office and the tenant was provided a key to the unit. Landlord1 said the tenant is still living in the unit. The tenant is a hoarder. There is a lot of clutter on the inside of the unit. He has destroyed the property. They have given him multiple opportunities to clean up the property.
21. Landlord1 submitted a copy of the termination notice (LL #1), a copy of the notice to carry out repairs (LL #3), photographs of the outside of the unit taken on May 6, 2020 (LL #7), and photographs of the outside of the unit taken on May 13, 2020 and photographs of the inside of the unit taken on June 2, 2020 (LL #8).

Analysis

22. Section 22.(2) states that where a tenant contravenes statutory condition 2 set out in subsection 10(1) within 3 days after the notice under subsection (1) has been served or within a reasonable time, the landlord may give the tenant a notice to vacate not less 5 days after the notice is served. I find that that when the landlord served the notice to make repairs the landlord did not give the tenant the required 3 days as required by the Act. As the landlord did not give the tenant the required amount of time to make the repairs, the termination notice served on the tenant is not a valid notice.

Decision

23. The landlord's claim for vacant possession fails.

Issue 4: Changing of the locks - \$271.95

Landlord Position

24. Landlord1 testified that they incurred a cost of \$271.95 to have the locks changed. On June 2, 2020 a notice of abandonment was posted on the door

as they had not heard from the tenant in a couple of days and the rent for June 2020 had not been paid. The notice stated that they would enter the property on June 3, 2020 @ 1:00 p.m. if they have not heard from the tenant. They did not hear from the tenant on June 3, 2020 so they changed the locks to the unit.

25. Landlord1 submitted a copy of the bill sent to the homeowner for the changing of the locks in the amount of \$271.95 (LL #6). The breakdown of the bill is \$137.50 for the time spent purchasing and installing the locks; \$98.98 for the purchase of the locks and \$35.47 for the taxes.

Analysis

26. I have reviewed the testimony and the evidence of landlord1. I have determined that there is one issue that needs to be addressed; is the tenant responsible for the cost of the changing of the locks. 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 fails.

Decision

27. The claim for the cost to have the locks changed fails.

Issue 5: Compensation for service calls - \$189.75

Landlord Position

28. Landlord1 testified that they billed the homeowner for 3 service calls at a rate of \$55.00 per hour plus tax for a total of \$63.25 ($\$55.00 + \$8.25 = \63.25). On June 1, 2020 they had to post a notice on the door; June 2, 2020 they inspected the inside of the unit and on June 10, 2020 they did another inspection on the outside of the unit. On June 10, 2020 they wanted to see if the tenant was cleaning up the property. Landlord1 submitted a copy of the bill for the homeowners in the amount of \$189.75 (LL #5) for the 3 service calls.

Analysis

29. I have reviewed the testimony and the evidence of landlord1. I have determined that there is one issue that needs to be addressed: is the tenant responsible for the service calls. I find that the landlord inspected the property on June 2 and 10, 2020. The cost the landlord is claiming for their time would be a normal cost associated with carrying out their business. As a result, the claim for compensation for service calls fails.

Decision

30. The landlord's claim for compensation for service calls fails.

Issue 6: Replacement of smoke detectors - \$155.20

Landlord Position

31. Landlord1 testified that an employee from the office called the Fire Marshall's office to have someone inspect the unit due to the amount of clutter in the unit. On June 19, 2020 two representatives from the Fire Marshall's office inspected the unit. During the inspection it was noted that the 4 smoke detectors were missing. They were advised by the representatives, the smoke detectors had to be installed. They installed the 4 smoke detectors at a cost of \$155.20; \$55.00 for labour; \$79.96 for materials and \$20.24 for taxes (LL #9).
32. Landlord1 submitted a copy of the invoice for the purchase and the installation of the smoke detectors (LL #9); copies of e-mails between their office and the Fire Marshall's office (LL #11), and a copy of the ingoing inspection report (LL #12). The inspection report shows that there were 4 smoke detectors in the unit at the start of the tenancy.

Analysis

33. I have reviewed the testimony and the evidence of landlord1. I find that there is one issue that needs to be addressed; is the tenant responsible for the replacement of the smoke detectors. Based on the copy of the ingoing inspection report I find that there were smoke detectors in the unit at the start of the tenancy. Based on the e-mails between the employees of the landlord and the Fire Marshall's office, the smoke detectors were missing when the inspection was carried out. As the smoke detectors were missing, the tenant would be responsible for the replacement of the smoke detectors. I also find that the amount the landlord is claiming to have the smoke detectors replaced is reasonable. Therefore, the claim for replacement of the smoke detectors succeeds in the amount of \$155.20.

Decision

34. The claim for compensation for replacement of the smoke detectors succeeds in the amount of \$155.20.

Issue 7: Compensation for Garbage Removal – \$172.50

Landlord Position

35. Landlord1 testified that on the morning of June 5, 2020 they hired JMT Services to remove garbage from the outside of the property. The representatives from the company removed a trailer full of garbage bags and old wood. They were charged \$172.50 to have the garbage removed. She stated later that day the tenant came to their office and they provided the tenant with a key to the unit.
36. Landlord1 submitted photographs of the outside of the property (LL # 7 & 8) and a copy of the invoice in the amount of \$172.50 from JMT Services (LL #10).

Analysis

37. I have reviewed the testimony and evidence of landlord1. I have determined that there is one issue that needs to be addressed; is the tenant responsible for the garbage removal. I find based on the photographs landlord1 presented there was a lot of garbage on the outside of the property. The amount they were charged to remove the garbage is reasonable. Therefore, the claim for garbage removal succeeds in the amount of \$172.50.

Decision

38. The landlord is entitled to garbage removal in the amount of \$172.50.

Issue 8: Hearing Expenses - \$20.00

39. 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

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

Analysis

41. 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 is

successful, the tenant is responsible to cover the cost of the hearing expenses in the amount of \$20.00.

Decision


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

Summary of Decision

43. The landlord is entitled to the following:

- a) Payment of rent..... \$3000.00
- b) Late fees \$75.00
- c) Compensation for replacement of the smoke detectors .. \$155.20
- d) Compensation for garbage removal \$172.50
- e) Hearing expenses \$20.00
- f) **Total owing to the landlord** **\$3422.70**
- g) The claim for Vacant Possession fails

July 22, 2020
Date


Residential Tenancies Section