

Residential Tenancies Tribunal

Application [REDACTED]

Decision 19-0004-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:20 am on January 17, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The landlords, [REDACTED] and [REDACTED], hereafter referred to as landlord1 and landlord2 respectively, participated in the hearing.
3. The tenant, [REDACTED], was not present at the hearing.

Preliminary Matters

4. The landlords called the following witness:
 - a. [REDACTED] – upstairs tenant

Issues before the Tribunal

5. The landlords are seeking the following:
 - a. Vacant possession of the rental premises;
 - b. Payment of rent in the amount of \$762.34;
 - c. Hearing expenses.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
7. Also relevant and considered in this case are Sections 10, 19, 24 and 34 of the Act and Policy 12-1: Recovery of Fees: Filing and Hearing Expenses.

Issue 1: Vacant Possession of the Rental Premises

8. 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 24 of the *Act* where the tenant contravenes the statutory condition regarding peaceful enjoyment and reasonable privacy under Section 10.(1) 7.(a).

Landlord Position

9. Landlord1 stated that the tenant moved into the unit on September 1, 2018 on a month to month tenancy with rent set at \$800.00 per month due on the 1st of each month. The unit was a non-smoking unit. A security deposit in the amount of \$400.00 was paid on September 24, 2018. When the tenancy started on September 1, 2018 the tenant's girlfriend was living in the unit. She moved out on/or about December 4, 2018.
10. Landlord1 testified she served a termination notice on the tenant on January 1, 2019, under Section 24 of the *Act* (Exhibit L #1) with an effective date of January 7, 2019. This notice was posted on the door of the rental unit. As of the date of the hearing, the tenant still lived in the unit. Landlord1 said there are 2 people living in the unit.
11. In support of the termination notice for unreasonable interference with peaceful enjoyment and reasonable privacy, Landlord1 stated she received a text message from the tenant's girlfriend on December 6, 2018 stating she was moved out of the unit and another person had moved in. She told Landlord1 the tenant was smoking marijuana in the unit. Landlord1 recalled that on December 7, 2018 they received a call from the upstairs tenant advising that the police were at the downstairs unit that morning. The upstairs tenant told them she was up early and she could hear people arguing downstairs. She was debating whether she should call the police but before she got to call the police there was a knock on her door and it was the police.
12. Landlord1 said she and landlord2 went to the property on December 7, 2018. Once they were inside they could smell the marijuana. They told the tenant it was a smoke free apartment and he replied that it was not him, but that he had some friends over the night before. The landlords asked him about the police being at the unit and he said his friends were the ones in the ruckus and he was the one who called the police.

13. Landlord1 then stated that on December 30, 2018 she and landlord2 received a call from a neighbor informing them the police had been at the unit. There was a male and female on the side of the street physically into it. The landlords went to the apartment to speak with the tenant but he wasn't home. They then went upstairs to speak to the upstairs tenant. The upstairs tenant told them she was not aware the police were there but she said the smell coming from the downstairs unit the past few days was ridiculous. The upstairs tenant has a small business in her unit and she stated she is constantly apologizing to her clients. Later that evening, around 9:30 p.m. the landlords were driving down [REDACTED] and they had to pull over on the side of the road for the police. The police went to their basement unit. They stopped and landlord1 asked if she is permitted to know what's going on inside and the police officer told her "no" because of confidentiality. They stayed around for 2 hours but before they left, they spoke with another police officer who assured them everything was under control. The next day they received a call from the upstairs tenant informing them they had to call the police at 12:00 a.m. because of the noise.

Witness Position

14. Witness for the landlord testified that the police were called to the unit numerous times because of noise and that the tenants would be yelling and screaming. She said her daughter called the police 3 or 4 times. The first time her daughter called the police she was not home but the second time she called she was home. She said she heard the tenant downstairs say *"I'll burn this house down"*. The last time her daughter called was at midnight on December 30, 2018.
15. The witness also testified that the tenants are constantly arguing and that it could be 4 o'clock in the morning or 4 o'clock in the evening. She indicated that it is annoying when she is sitting with her client and that she is not able to talk to them because of the noise coming from the basement unit. She also said the smell of pot that goes through the house is ridiculous. Since pot became legal she can smell pot daily and the unit is supposed to be smoke free. She advised that the smell is coming up through the unit and in the laundry room she can smell the pot the worst. She added it is embarrassing to her when the police arrive because they always park in front of the house and the entrance to the basement unit is on the side of the house.

Analysis

16. I have reviewed the testimony and evidence of the landlords and the witness in this matter. Based on the testimony presented I find there is a lot of noise coming from the downstairs unit and the police have been at the unit on a few occasions. There is also a smell of smoke coming up from the downstairs unit.
17. Section 10.(1) 7.(b) doesn't allow for the tenant to unreasonably interfere with the rights of the landlord and other tenants in the residential premises. As the noise and the smell of smoke were interfering with the rights of the tenant living upstairs, the landlords had grounds to terminate the tenancy under Section 24 of the Act.
18. Section 24(2) and 34 outlines the requirements on how a termination notice should be completed. After reviewing the notice, I find the notice contains all of the required information to serve on the tenant.

Decision

19. The claim for vacant possession succeeds. The landlords are further awarded costs associated with the enforcement of the Possession Order by the High Sheriff of NL.

Issue 2: Payment of rent - \$762.34

20. In determining an application for the payment of rent, the landlords are required to establish the rental rate and the payment record.

Landlord Position

21. Landlord1 testified a portion of the rent was paid by a third party and the tenant paid the remainder. The rent was paid up to the end of November 2018. On November 30, 2018 she received \$70.48 from the third party and the tenant paid \$330.00 on December 4, 2018 and \$340.00 on December 18, 2018 leaving a balance of \$59.22 for December 2018. Landlord1 said that on December 31, 2018 they received \$97.18 towards January's rent which was the last time they received rent. Landlord1 presented copies of the cheque stubs from the third party for the payments on November 30, 2018 and December 31, 2018 (Exhibit L #2), a copy of the bank statement showing the two e-transfers and a copy of the Interac e-transfer dated December 18, 2018(Exhibit L #3).

Analysis

22. I have reviewed the testimony and evidence of the landlords in this matter. I find that a portion of the rent is owed for December 2018 and January 2019. Based on the copy of the cheque stubs and the bank statement, \$59.22 is owed for December 2018 and \$97.18 has been paid towards January’s rent. Rent for the month of January can only be awarded up and including the day of the hearing (January 17, 2019). The amount of rent owing for January is \$349.92 ($\$800.00 \times 12 \text{ months} = \$9600.00 \div 365 \text{ days} = \$26.30 \text{ per day} \times 17 \text{ days} = \$447.10 - \$97.18 = \349.92). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$26.30 beginning on January 18, 2019 and continuing until the day the landlords obtain vacant possession of the rented premises.

Decision

- 23. The landlords’ claim for rent succeeds as per the following:
 - a. Rent owing for December 2018.....\$ 59.22
 - b. Rent owing for January 1 – 17, 2019\$349.92
 - c. Total arrears.....\$409.14
 - d. A daily rate beginning January 18, 2019\$ 26.30

Issue 3: Application for Security Deposit

24. 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.

Analysis

25. The tenant paid a security deposit of \$400.00 on September 24, 2018. As the landlords have been successful in their claim for rent they shall retain the security deposit as outlined in this decision and order.

Decision

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

Issue 4: Hearing Expenses

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 and Hearing Expenses*.

Landlord Position

28. The landlords paid an application filing fee in the amount of \$20.00. The landlords are seeking this cost.

Analysis

29. The cost the landlords incurred to make the application is considered a reasonable expense as per Policy 12-1 Recovery of Fee: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF. Therefore, I find the tenant is responsible to cover the cost of the application filing fee.

Decision


30. The tenant shall pay the landlords' hearing costs in the amount of \$20.00.

Summary of Decision

31. The landlords are entitled to the following:

- a) Rent owing \$409.14
- b) Hearing expenses \$ 20.00
- c) **LESS: Security deposit** **(\$400.00)**
- d) **Total Owing to Landlords** **\$ 29.14**
- e) Vacant Possession of the rented premises
- f) A daily rate of rent in the amount of \$26.30 beginning January 18, 2019 and continuing until the day the landlords obtain possession of the rental unit.
- g) Any cost incurred should the landlords be required to have the Sheriff enforce the attached Order of Possession.

January 25, 2019
Date


Residential Tenancies Section