

Residential Tenancies Tribunal

Decision 19-0043-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:30 a.m. on February 12, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The tenant, [REDACTED], hereafter referred to as the tenant, participated in the hearing.
3. The landlord, [REDACTED], hereafter referred to as landlord1, participated by telephone and [REDACTED], hereafter referred to as landlord2, was not present at the hearing but was represented by [REDACTED]

Issues before the Tribunal

4. The tenant is seeking the following:
 - a. Validity of the termination notice;
 - b. Hearing expenses.
5. The landlords are seeking the following:
 - a. Vacant possession of the unit;
 - b. 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, 22, 34 and 35 of the Act and Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Validity of a Termination Notice/Vacant Possession

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 22 of the Act where the tenant contravenes the statutory condition regarding the tenant's obligations are not met under Section 10.(1) 2.

Tenant Position

9. The tenant testified he moved into the unit and rented one room in May 2017. In September 2018 he signed a lease agreement to rent one room for 8 months with rent set at \$400.00 per month due on the 1st of each month. There were 3 other rooms rented in the unit.
10. The tenant further testified he is contesting the notice because he never saw the notice to clean the unit until January 15, 2019. The notice (T#2) he found on the table in the common area was a material breach of the rental agreement. The form stated "12.(2) obligation of the tenanes: to keep the house clean. Comments: Too dirty, might cause pest issues! Need action, Now!" The notice was dated January 12, 2019 and the work had to be completed by January 16, 2019. Then on January 16, 2019 he found a termination notice (T #1) posted to the door of his room. The notice was under section 22 to vacate on January 22, 2019.
11. The tenant stated he is not friends with the other tenants living in the room. When he found the notice on the 15th to have the unit cleaned by the 16th he was busy to do anything about it that day.
12. The tenant also testified when he signed the lease agreement in September 2018 there was no agreement on the cleaning of the common area. The tenant stated this is what the landlord told him and the other tenants living in the unit. They would be responsible for the cleaning of the common area. If they didn't clean the common area he would hire a cleaner. The cost of the cleaner would be divided among the tenants. During the period from September to November the four tenants cleaned the unit. The tenant was not sure what happened in December as he was out of the country from December 2, 2018 – January 4, 2019. The tenant said he thought the landlord would hire a cleaner to clean the unit and divide the cost between the four tenants.

Landlord Position

13. Landlord1 testified that he went to the unit on January 12, 2019 to show a room to a perspective tenant as one of the other tenants was moving out. Another tenant living in the unit let him in the unit. When he was inside he noticed the house was in a very dirty state. He went out to his car and he wrote up a notice to clean the house. When he went back inside he gave the notice to the tenant who was home. Landlord1 said the tenant read the notice and gave him back the notice. Landlord1 then laid the notice down on the table in the entrance way. He told that tenant to let the other tenants know about the notice and the tenant said ok. Landlord1 said he has a separate rental agreement with each tenant. Landlord1 acknowledges the notice did not state what needed to be cleaned but he said every time he was at the unit he would tell the tenants the kitchen and the common area were dirty.
14. The landlord further testified that when he went back to the unit on January 16, 2019, the unit was not cleaned. The other three tenants were at the unit and they agreed the unit was not cleaned. He then gave a termination notice to each tenant to vacate by January 22, 2019. He posted the tenant's termination notice on the door of his room. The other three tenants vacated the unit. The landlord stated when he went back to the unit on/about January 22, 2019 the unit was clean. Landlord1 presented two videos of the unit. One video was taken on January 12, 2019 and the other video was taken on January 16, 2019 (LL #1).

Analysis

- 15 I have reviewed the testimony and the evidence of the tenant and landlord1 in this matter. Based on the testimony and evidence presented I find the notice given on January 12, 2019 stated section 12.2 and the notice did not state what needed to be cleaned. Section 12.(2) states:

Notwithstanding subsection (1), a rental agreement may provide for the delivery of a post-dated payment method for the payment method for the payment of rent.

16. The correct section of the Act is 10.(1).2.

10.(1). 2. Obligation of the Tenant – The tenant shall keep the residential premises clean, and shall repair damage caused by a willful or negligent Act of the tenant or of a person whom the tenant permits on the residential premises.

17. I also find the representative did not post the notice in a conspicuous place on the tenant's residential premises as per Section 35.(2)(c) of the Act. Furthermore, the representative failed to establish that the tenant was responsible for the cleaning of the unit. As the notice given on January 12, 2019 did not quote the correct section nor state what needed to be cleaned and the notice was not properly served, the termination notice issued on January 16, 2019 is not a proper notice. Therefore, the claim for vacant possession fails.

Decision

18. The termination notice issued on January 22, 2019 is not a valid notice and the claim for vacant possession fails.

Issue 2: Hearing Expenses

19. 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, Hearing Expense, Interest, Late Payment and NSF*.

Tenant Position

20. The tenant paid an application filing fee in the amount of \$20.00. He is seeking this cost.

Landlord Position

21. The landlords paid an application filing fee in the amount of \$20.00 and \$8.05 for a USB (LL #2). The landlords are seeking the cost of these items.

Analysis

22. The cost the tenant and the landlords incurred to make the application is considered a reasonable expense as per Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*. The tenant's claim is successful and the landlords' claim is unsuccessful. Therefore, I find the landlords are responsible to cover the tenant's cost of the application filing fee.

Decision

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

Summary of Decision

24. The tenant is entitled to the following:

- a) Hearing expenses \$ 20.00
- b) The termination notice is not a valid notice
- c) Vacant Possession of the rented premises is unsuccessful.

February 15, 2019
Date


Residential Tenancies Section