

Residential Tenancies Tribunal

Decision 19-0055-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 1:45 pm on 11 October 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and via Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as landlord, participated in the hearing and was represented by [REDACTED] – Property Manager - **Affirmed**.
3. The respondent, [REDACTED], hereafter referred to as tenant, participated in the hearing - **Affirmed**.
4. In a proceeding under the *Residential Tenancies Act*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

5. The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **01 October 2019** by serving the Application for Dispute Resolution documents to the tenant personally at the rented premises.

Issues before the Tribunal

6. The landlord is seeking the following:
 - a) Compensation for Damages **\$1173.00**;
 - b) Vacant Possession
 - 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 24, 34 and 35 of *the Act*; Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*; Policy 9-3: *Claims for Damages to the Rental Premises*.

Issue 1: Damages - \$1173.00

Relevant Submissions

Landlord Position

9. The landlord stated that the tenant has had some behavior and anger issue at the property which has led to the destruction of the landlord's property. The landlord referred to an incident on 22 July 2019 where the glass of the lobby door was broken. The landlord submitted a copy of an internal incident report and an invoice from Raven Corp Inc. (**Exhibit L # 1**) to replace the broken glass with safety glass (\$373.75). The landlord then referred to a subsequent incident 13 August 2019 where it is reported that the tenant was fighting with his brother in the hallway when the tenant kicked the glass door in the main entrance and broke the glass. The landlord submitted a copy of the incident report, pictures of the damages and a quote from Speedy Glass (**Exhibit L # 2**) in the amount of \$799.25.
10. The landlord testified that as a result of the incidents, they are seeing a pattern of violence and this behavior does not fit with the building make-up. As such, the landlord issued a termination notice (**Exhibit L # 3**) to terminate the tenancy on 19 August 2019.
11. The landlord is seeking compensation for the damages to the property caused by the tenant.

Tenant Position

- 12. The tenant acknowledged his behavior as described by the landlord above and indicated that he was angry on both occasions and just reacted. He indicated he lashed out and did damage the doors but would like to stay and continue his education.

Analysis

- 13. I have reviewed the testimony and evidence of the landlord and tenant in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) is the damage that is being claimed by the landlord actually the responsibility of the tenant.
- 14. With respect to the damages being claimed, the tenant has acknowledged the damages and that he was responsible for the damages as a result of his anger outbursts. The landlord has further substantiated the extent of the damages with the internal incident reports, photos and invoices. I find that the tenant is responsible for the damages caused to both doors on separate incidents. This damage was caused as a direct result of a willful act of the tenant out of anger. The life expectancy of a window (entire unit) would be in excess of 50 years. As such, I would assess that the glass would have a life expectancy of life time unless otherwise broken. As such, I accept the two invoices/quotes submitted by the landlord and find that the tenant is responsible for the repairs in the amount of **\$1173.00** as claimed.

Decision

- 15. The landlord's total claim for damages succeeds as follows:
 - a) Damages \$1173.00
 - b) **Total Owing..... \$1173.00**

Issue 2: Vacant Possession

Relevant Submissions

Landlord Position

16. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
17. The landlord testified that the tenant has become disruptive and destructive in the property and the violent tendencies are not a good fit for the building. The landlord referred to the anger outbursts noted in the damages section above and the acknowledgement of the tenant of same. The landlord testified that they issued a notice to the tenant (**Exhibit L # 3**) on 13 August 2019 for the intended termination date of 19 August 2019 under section 24 of the *Act*, thereby terminating the tenancy on this date. The landlord indicated that as of the hearing date (10 October 2019), the tenant remained in the unit.

Tenant Position

18. The tenant testified that he was aware of what the landlord was seeking but wished to stay in the unit. He further indicated that he was the only person living in the unit.

Analysis

19. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 24(2) and 34 as well as the service requirements identified in section 35.
20. The issue of interference with peaceful enjoyment of the property is clearly related to the angry outbursts and subsequent damages from the tenant.
21. The landlord issued a termination notice under section 24 of the *Residential Tenancies Act* by personally delivering a copy to the tenant at the rented premises. Section 24 requires that the landlord provide notice to the tenant that the rental agreement is terminated and the tenant is required to vacate the property on a specified date not less than 5 days after the notice has been served. I accept the evidence of the landlord and find that the tenant has interfered with the peaceful enjoyment and reasonable privacy of the adjoining tenant and the landlord by displaying angry outbursts which resulted in destruction of the landlord's premises.

22. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 3**), I find the notice was served on 13 August 2019 with a termination date of 19 August 2019. As established above, the tenant has interfered with the peaceful enjoyment of the adjoining tenants and landlord. I further find that as the date of termination identified on the notice is not less than 5 days after the notice has been served and the date the tenant is required to move out, the termination notice is in full compliance with the requirements of section 24(2). Sections 24(2) and 34 identify the technical requirements of the termination notice as identified below. On examination of the termination notice, I find it all these criteria have been met.

section 24 (2)

In addition to the requirements under Section 34, a notice under this section shall

- (a) be signed by the landlord;*
- (b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*
- (c) be served in accordance with section 35.*

section 34

A notice under this Act shall

- (a) be in writing in the form prescribed by the minister;*
- (b) contain the name and address of the recipient;*
- (c) identify the residential premises for which the notice is given; and*
- (d) state the section of this Act under which the notice is given.*

23. As identified above, the landlord testified that he served the termination notice by personal service which is a permitted method of service identified under section 35.
24. According to the reasons identified above, I find that the termination notice issued by the landlord to be proper and valid. Therefore, the landlord is entitled to an order for vacant possession of the property along with an order for any and all costs associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

Decision

25. The landlord’s 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.

Issue 3: Hearing Expenses

Landlord Position

26. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL [REDACTED] (*Exhibit L # 4*). The landlord is seeking this cost.

Analysis

27. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlord are considered a reasonable expense and are provided for with in Policy 12-1 *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*. As such, I find the tenant is responsible to cover these reasonable expenses.

Decision

28. The tenant shall pay the reasonable expenses of the landlord in the amount of \$20.00

Summary of Decision

29. The landlord is entitled to the following:

- a) Damages\$1173.00
- b) Hearing Expenses \$20.00
- c) **Total Owing Landlord.....\$1193.00**
- d) Vacant Possession of the Rental Property
- e) The landlord is further awarded costs associated with the enforcement of the Possession Order by the High Sheriff of NL.

06 November 2019

Date



Michael Greene
Residential Tenancies Tribunal