

Residential Tenancies Tribunal

[REDACTED] Decision 19-0208-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:30 a.m. on April 4, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The landlord, [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The tenant, [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. This Tribunal's policy concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
5. According to Rule 29.05(2)(a) a respondent to an application must be served with 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.
6. The affidavit of service submitted by the landlord shows that the notice of this hearing was personally served on March 22, 2019 and the tenant has had 12 days to provide a response. 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 his absence.

7. Prior to the hearing, I called the respondent and asked if he would like to participate by telephone. He stated he was moving out. I asked him if he would like to try to mediate and he got very upset and starting shouting. He then disconnected the call.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a. Vacant possession of the rental premises.

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, 24, 34 and 35 of the Act.

Issue 1: Vacant Possession of the Rental Premises

11. 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 Act by interfering with the peaceful enjoyment of the landlord.

Landlord Position

12. The landlord stated that she is the homeowner and she rented a room to the tenant at a rate of \$300.00 per month due on the 1st of each month. The tenant moved into the room in May 2018. The tenant is her son.
13. The landlord testified that everything was fine until sometime in October 2018 when the tenant and his brother had an exchange that became physical. His brother moved out of the unit. Since this instance her other son and daughter do not come to the unit. She has to see them outside of her home.
14. The landlord said that in November 2018 the tension in the unit increased and she told the tenant she wanted him out by December 31, 2018. On December 2, 2018 in a rage the tenant cut himself in front of the landlord and he approached her with the knife in hand claiming he wanted a hug. The landlord called the police and the paramedics.

15. The landlord further testified that in December 2018 she gave him a termination notice to vacate on April 30, 2019. After she gave him the notice his behavior escalated. She said she can't give him any direction or ask him to do anything without an altercation. During an altercation he would not make a physical threat but he would intimidate her and stare her in the face. This scares the landlord. She said he would be in a rage jumping up and down and he could destroy the place in 30 seconds. An altercation takes place on a daily basis.
16. The landlord also testified that every time she suggests to the tenant that their arrangement is not working out he makes threats to her that he is going to inflict self-harm. Also during an altercation he gets upset to the point he is going to go downstairs and hang himself.
17. The landlord then testified that when she sent him a text message on March 21, 2019 reminding him he has to be out by April 30, 2019 he started an altercation through a text message and he posted a message on facebook trashing the landlord. The next day she served him with a termination notice (LL #1) under section 24 of the Act to vacate on March 28, 2019. This notice was sent by text message and e-mail. The landlord submitted copies of the text messages that the tenant sent to her in October and December 2018 and on March 21, 2019 and a copy of the post to the tenant's facebook page (LL #4).
18. The landlord then testified that on April 1, 2019 she served a peace bond on the tenant. After she served him the peace bond he left a voice message on her phone. The landlord played the voice message at the hearing. The tenant was very upset and shouting. The landlord said it is a very volatile situation that is progressively getting worse. The tenant is full of rage.
19. The landlord testified that the tenant paid the rent for the period of May – October 2018 but since October she received \$210.00 in February 2019. The landlord presented a copy of the list of deposits made to her account for the period September 30, 2018 – March 19, 2019. There is a deposit of \$300.00 from the tenant on October 19, 2018 and a deposit of \$210.00 on February 19, 2019 (LL #2).

Analysis

20. I have reviewed the testimony and evidence of the landlord in this matter. As far and I can see there are 2 issues that need to be addressed: (i) is it a landlord and tenant matter and (ii) is the notice issued by the landlord valid; With respect to the issue if it is a landlord and tenant matter, I find it is a landlord and tenant matter as the tenant was paying \$300.00 rent per month

even though the landlord did not receive the rent for the months of November 2018 – January 2019.

21. With regard to the claim for vacant possession. I accept the landlord's testimony that there is an altercation between the landlord and the tenant on a regular basis and due to the tenant's behavior the landlord's other children do not visit the home. Also based on the text messages presented the tenant is sending text messages to the landlord indicating he is going to cause harm to himself. Further the voice message the landlord played at the hearing the tenant is shouting at the landlord.
22. 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 there is an altercation on a daily basis and the tenant is sending text messages to the landlord that he is going to cause harm to himself, the tenant is interfering with the rights of the landlord and the landlord had grounds to terminate the tenancy under section 24 of the Act.
23. 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.

Decision

24. The claim for vacant possession succeeds. The landlord is awarded costs associated with the enforcement of the Possession Order by the High Sheriff of NL.

Summary of Decision

25. The landlord is entitled to the following:
 - a) Vacant Possession of the rented premises;
 - b) Any cost incurred should the landlord be required to have the Sheriff enforce the attached Order of Possession.

April 12, 2019

Date

[REDACTED]
Residential Tenancies Section