

Residential Tenancies Tribunal

[REDACTED] Decision 19-0251-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:35 a.m. on April 23, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The tenants, [REDACTED] and [REDACTED], hereafter referred to as tenant1 and tenant2, respectively, participated in the hearing.
3. The landlord, [REDACTED], hereafter referred to as the landlord participated in the hearing. She was represented by her legal counsel, [REDACTED].

Preliminary Matters

4. [REDACTED], hereafter referred to as witness1, appeared as a witness for the tenants.
5. [REDACTED], hereafter referred to as witness2, appeared as a witness for the landlord.
6. [REDACTED], hereafter referred to as witness3, appeared as a witness for the landlord.

Issues before the Tribunal

7. The tenants are seeking the following:
 - a. Validity of a termination notice;
 - b. Hearing expenses.

8. The landlord is seeking the following:
 - a. Vacant possession of the rental premises;
 - b. 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, 24, 34 and 35 of the Act and the costs eligible to be awarded are identified in *Policy 12-1: Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*

Issue 1: Vacant Possession of the Rental Premises/Validity of the termination notice

11. A successful order 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 rights of the upstairs tenants.

Tenant's Position

12. Tenant1 testified that they moved into the unit on March 22, 2019 on a verbal one year term agreement with rent set at \$900.00 per month due on the 1st of each month. They are contesting the termination notice that was served on April 4, 2019. There was a dispute with witnesses 2 and 3 over the driveway. When they moved into the unit the landlord told them the right of the house was their portion of the driveway. Tenant1 presented a copy of the text message (T #2). Since witnesses 2 and 3 have moved into the upstairs unit they have been continuously parking over on their side squatting their driveway to the point they are continuously walking on the neighbor's lawn. She said she checked with the Town of [REDACTED] on the size of a parking space and the size of a parking space as per the by-laws of the Town of [REDACTED] is 8.89'. The

size of the parking lot is 25'. In order to fit three cars in the driveway the driveway is short by 2'.

13. Tenant1 further testified that on April 3, 2019 when witness 2 and 3 were moving in they had a big truck that was blocking their driveway. They asked the moving company to move the truck. They replied by saying they would be finished in 30 minutes. The tenants told them that was not good for them. They had to wait 15 minutes to have the truck moved. Later that evening when witness 2 and her mother came home they were parked on their side of the driveway. The witnesses have oversized vehicles. When she asked witness 2 to move their vehicle words were said back and forth between herself and witness2. Witness2 kept on saying they pay more rent and they have two parking spaces. Tenant1 tried to show the message from the landlord which states they have to the right of the house for parking. She called witness 2 a "████████" and witness2 called her a "brat".
14. Tenant1 also testified that she sent many text messages to the landlord between April 3 and 4, 2019 because they wanted action fast as they needed access to the driveway. The landlord responded by basically telling them to move over and deal with it. And as long as they could get their cars in that would be fine. Tenant1 then said the next morning, April 4, 2019 around 8:15 she went upstairs to ask the witness2 to move their vehicle. Witness2 closed the door in her face. At around 9:42 a.m. another altercation took place when witness3 came home. She said to him that it was a beautiful ██████████ day to park on side of the road. She said she was intimidated by him. He was staring at her and she called him a "fat" man after he called her a "brat".
15. Tenant1 further testified that on April 6, 2019 they didn't have a problem for the technician from Bell Aliant to access the backyard. They had objections to them walking up and down the side of their driveway with ladders in their hands. She didn't speak to witnesses 2 and 3 about this matter. She expressed her concerns to the owner.
16. Tenant1 also testified that on April 17, 2019 when she went upstairs to ask if they could move the vehicle. The witness3 started screaming what's going on out there.
17. Tenant2 testified that he spoke with witness3 shortly after they received the termination notice. He said to him that he does not know what happened. He said the landlord promised them the right of the house as their parking area. You have two big vehicles. Witness3 replied by saying I am sick of this. This is why I offered the landlord to rent the whole house so that I can have the whole driveway to myself. Tenant2 said if the landlord had not lied to both sets of tenants about the driveway, the altercations would not have taken place.

Witness Position

18. Witness1 testified that on April 3, 2019 when she arrived at the unit sometime around mid-afternoon the witnesses' cars were very close to the tenants cars. While she was there she heard tenant1 say to witness2 "excuse me do you mine moving your car".

Landlord Position

19. The landlord testified she received a text message from Tenant1 claiming that there is not enough parking for the vehicles and the upstairs tenants' vehicles are on their side of the driveway. She was also complaining about witness2 walking up and down the side of the driveway going to the shed. I advised her there was enough room for the witnesses (upstairs tenants) to park two vehicles side by side and they can use the side for access to the shed. Shortly after receiving the text message she spoke with witness2 asking her to ensure that the movers do not block the basement tenant's access to the driveway. The landlord further testified she then received a message from Witness2 stating a confrontation between herself and tenant1 just happened in the driveway. She called witness2 and she was advised that tenant1 called her a "████████" and she called tenant1 a "brat". Witness2 told her this kind of living environment doesn't work for them. She then called tenant1 and tenant1 acknowledges she verbally attacked witness2 and called her a "████████". I made her fully aware that she would not be tolerating such behavior. Tenant1 told her that she understands and it would not happen again. After she was speaking with tenant1 she received constant text messages from 10:13 p.m. until 1:00 a.m. (LL #3).
20. The landlord further testified that she received eleven more messages (LL #3) from tenant1 between 7:55 – 8:30 a.m. on April 4, 2019 stating she expected the car to be moved from the driveway. She stated that she went upstairs and asked them to move the vehicle but they won't. The landlord said she received a text message from witness2 around 8:20 a.m. stating that tenant1 was already upstairs this morning banging on their door. At 8:42 a.m. she then advised tenant1 that the witness 2 and 3 are within their rights to park side by side. It's in their agreement. Shortly after she received a text message from tenant1 containing a photograph (LL #1) of witnesses 2 and 3 SUV and a truck parked in the driveway next to tenant1's mother SUV. Around 9:34 and 9:46 a.m. she received a call from witness3 informing him his wife called him to come home as she was getting uneasy with the situation escalating. Later that evening tenant1 informs her that witnesses 2 and 3 have moved their SUV more towards their side of the driveway and the parking situation is now perfect.

21. The landlord also testified that on April 5, 2019 around 7:46 p.m. she receives a text message from the witness3 showing where tenant1 moves a vehicle tight to their vehicle. She addressed this to tenant1 and tenant1 admits to doing it.
22. The landlord testified that on April 6, 2019 she received a message from witness2 stating they have installed a security camera overlooking the driveway because they are uneasy about their vehicles and personal safety.
23. The landlord also testified that she received over a dozen text messages between April 5 and 8, 2019 from tenant1 complaining about the parking and the tenants have sent a number of photographs of the vehicles in the driveway (LL #1). The landlord presented copies of the text messages (LL #3).
24. The landlord acknowledges she told the tenants their parking was the right side of the house but she never specified the size. She said the tenants were aware of the issue of the shed prior to them moving into the unit.
25. The legal counsel said the interference with peaceful enjoyment is the manner in the way the things are being said and the harshness. The language and the tone in which it was used led the witnesses to feel threatened.

Witness Position

26. Witness2 testified that when tenant1 came home on April 3, 2019 she was belligerent with the movers because the moving truck was across the driveway. Tenant1 asked the movers to move the truck and they did. Later that evening when her and her mother went to the unit, the tenant told her she had to move her car. She said she told the tenant she was living upstairs and they had parking for two cars. Tenant1 yelled at her and said she didn't have parking for two. She told tenant1 she was not moving and tenant1 told her to move the vehicle "████". Witness2 said her mother was appalled that someone called her a "████".
27. Witness2 further testified that on April 4, 2019 at 8:15 a.m. tenant1 knocked on the door demanding she move her vehicle as she had a truck coming. She said she told her she was not moving and closed the door. Tenant1 then moved her vehicle inches towards her mother's car and she had to crawl out through the passenger door. She texted the landlord about the situation and she called her husband to come home as she was uncomfortable with the situation. He came home.
28. Witness2 also testified that she felt very uncomfortable the 1st day moving into the unit. She said she does not like confrontations. She doesn't recall calling the tenant a "brat". She may have said it at the time as things were heated.

She also said every time they came out of the house there was a camera coming at us. They were under constant surveillance. Witness2 stated the tenants never made any physical threats or harm to them.

29. Witness3 testified that on April 4, 2019 his wife called for him to come home as she was not comfortable with the situation. When he arrived at the driveway tenant1 waved him over and she said it is a great [REDACTED]ing day to park on side of the road. He said is there something wrong with you. He then backed up his vehicle and he said to tenant1 that they just moved in and they got to get along. She called him a “[REDACTED]” and walked away.
30. Witness3 further testified that on April 5, 2019 a Bell technician knocked on his door to see if he could enter the backyard. He went with the technician and he said to the tenants he needs to get access to the backyard for service. They agreed and said make sure the gate is closed so that the dog don't get out. Then tenant2 asked him if he could speak with him in private. Tenant2 told him if he had to be there none of this would have went on with tenant1. Tenant2 also told him they had all kinds of issues with the parking at their last house. Witness3 responded by saying what happened in the past has no bearing on us right now. He has had enough. Witness3 said that tenant1 has attacked his wife and she has verbally attacked him. She has called him a “[REDACTED]” and a “[REDACTED]” and this is not going to be tolerated no more. Witness3 said he told tenant2 he is a business person in the community and he didn't do anything wrong to these people. He do not deserve it and he doesn't appreciate it. Tenant2 was fine with it.
31. Witness3 further testified that on April 5, 2019 he parked his car in the driveway and tenant1 came out and moved her vehicle within 8 inches of his vehicle so that he could not get in his vehicle. She had to get out on the passenger side. He said for the period of April 6 – 15, 2019 there were no other incidents to report. Only the moving of vehicles. Then on April 16, 2019 tenant1 knocked on the door and told his mother in-law to move her car. He went out and told the tenants he has two parking spots. His wife parks tight to the grass and his mother in-law's car is parked next to it. He said in his opinion there is lots of room to park three vehicles in the driveway and this is gone way too far.
32. Witness3 testified that on April 17, 2019 the landlord contacted him and said that tenant1 contacted her and said that she just witnessed their son kick tenant2's car. He said this is not true. Tenant1 responded by saying she never said the witnesses' son damaged the vehicle. He contacted the RNC. He wanted to give a statement but the police told him there was no reports on file with damages to a vehicle on that street. The same day his son sent him a photograph showing the way the tenant's car was parked in the driveway. If his mother in-law backed out her car she would have hit the downstairs tenant's car.

33. Witness3 testified that his wife and his mother in-law were very intimidated. His wife would do anything to avoid conflict. His said his wife is out in the waiting area crying. She has anxiety over the parking issue. He has never seen her with anxiety before and they have been together for 25 years. He also said they have a cabin that they go to every weekend. The first week-end they were living in this unit his mother in-law stayed home. She felt uncomfortable and she was afraid to be in the house by herself. Witness3 further testified that the parking would be perfect for a few days then something snaps. They come knocking on the door. He doesn't want them knocking on the door. If they have a problem they should contact the landlord.

Analysis

34. I have reviewed the testimony and evidence of the landlord, tenants and the witnesses in this matter. I find that the tenants contacted the witnesses numerous times on moving their vehicles and on at least one occasion tenant1 moved her vehicle closer to the witnesses' vehicles. Tenant1 sent numerous messages to the landlord during the period April 3 – 8, 2019 concerning the driveway. Both of the tenants acknowledge there were at least two altercations between the tenants and witness 2 and 3 concerning the parking issue. Further tenant1 acknowledges she used vulgar language on witness 2 and 3.

35. Section 10.1(7)(a) doesn't allow for the tenant to unreasonably interfere with the rights of the landlord and other tenants in the residential premises. The tenants were interfering with the rights of the upstairs tenants and the landlord had grounds to terminate the tenancy under section 24 of the Act as there were a couple of altercations and the tenants contacted the witnesses on a number of occasions to move their vehicle. Further tenant1 acknowledges she sent numerous text messages to the landlord and she used vulgar language on the upstairs tenants.

36. 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

37. 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.

Item 2: Hearing expenses

38. 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*.

Tenant Position

39. The tenants paid \$20.00 to file the application for Dispute Resolution.

Landlord Position

40. The landlord paid \$20.00 to file the application for Dispute Resolution.

Analysis

41. The costs the tenants and landlord incurred to file the applications, are considered a reasonable expense as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. However, as the landlord's claim has been successful, the tenants shall pay the landlord's hearing expenses in the amount of \$20.00.

Decision

42. The tenants 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) Vacant Possession of the rented premises;
- b) **Hearing expenses**\$20.00
- c) Any cost incurred should the landlord be required to have the Sheriff enforce the attached Order of Possession.

May 6, 2019

Date

[Redacted]
Residential Tenancies Section