

Residential Tenancies Tribunal

[REDACTED] Decision 19-0624-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:25 a.m. on August 22, 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, participated in the hearing by conference call.

Issues before the Tribunal

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

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
6. Also relevant and considered in this case are Sections 10, 22, 34 and 35 of the Act.

Issue 1: Vacant Possession of the Rental Premises

7. 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.

Landlord Position

8. The landlord testified that when she purchased the house in April 2019 the tenant was living in the unit. The rent is set at \$750.00 per month due on the 1st of each month.
9. The landlord testified that she viewed the unit two times before she purchased the house. There was no damage. On July 23, 2019 (LL #2) she posted a notice on the door to inspect the unit on July 24, 2019 because of the excessive yelling and banging coming from the unit. When she went into the unit on July 24, 2019 she discovered there was a hole in the wall behind the door at the bottom of the stairs; a hole in the wall in the living room; damage to one wall in the kitchen, above and below the moulding that was on the wall; and the window in the 2nd bedroom was broken. She gave the tenant a notice to request repairs (LL #3). This notice was posted on the door and the repairs had to be carried out by August 7, 2019.
10. The landlord testified that on August 7, 2019 she posted a notice to enter (LL #2) the property on August 8, 2019. She wanted to check to see if the repairs were carried out. When she went into the unit on August 8, 2019 the repairs were not carried out plus there were more damages to the unit. She then posted a termination notice (LL #1) on the door of the unit to vacate on August 14, 2019. The notice was served under section 22 of the Act. The landlord presented photographs of the damages she requested to be repaired (LL #4) plus photographs of the other damages (LL #5). The photographs were taken August 8, 2019.

Tenant Position

11. The tenant testified that he moved into the unit on July 1, 2018 and the current landlord purchased the house in April 2019. He received the two notices to enter the unit, the notice to effect repair and the termination notice. The notices were posted on the door. He said they should have been handed to him. He testified that the damages to the wall behind the entrance door, the living room wall and the kitchen wall were caused by him due to accidents. He said the window in the bedroom was in that condition when he moved into the unit.

Analysis

12. I have reviewed the testimony and the evidence of the landlord and tenant and I find there is one issue that needs to be addressed; is the termination notice a valid notice. Section 22 requires that the tenant be given notice to make the repairs and if the repairs are not carried out the landlord can give a notice to move out not less than 5 days. I find that the tenant acknowledges that the damages were accidentally caused by him. I also find that the landlord gave the tenant 14 days to carry out the repairs and the repairs were not completed. Further the termination notice allowed the required amount of time and contains all of the necessary information to serve on the tenant as per sections 22.(3) and (34) of the Act. The notice was served in accordance with Section 35 of the Act. Therefore, the termination notice is a valid notice.

Decision

13. 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 should the landlord require the Sheriff to enforce the Order of Possession.

Summary of Decision

14. 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.

September 4, 2019
Date

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Residential Tenancies Section