

Residential Tenancies Tribunal

[REDACTED] Decision 19-0772-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:25 p.m. on November 18, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The respondent, [REDACTED], hereafter referred to as the tenant, participated in the hearing.

Preliminary Matters

4. The landlord called [REDACTED], a former tenant, as a witness. [REDACTED] attended by conference call.

Issues before the Tribunal

5. The landlord is seeking the following:
 - a. Vacant possession of the rental premises;
 - b. Payment of rent in the amount of \$750.00;
 - c. Payment of late fees in the amount of \$75.00;
 - d. 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 14, 15, 19, 24, 34 and 35 of the Act and Policy 12-1: *Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Vacant Possession of the Rental Premises

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 24 of the Act where the tenant contravenes the Act by interfering with the peaceful enjoyment of other tenants.

Landlord Position

9. The landlord testified that the tenant and another tenant moved into the unit on May 1, 2019 for a one year term with rent set at \$750.00 per month due on the 1st of each month. In July 2019 he let the second tenant move out. Since the tenants have moved in, he has been receiving complaints from the tenants who were living in the basement unit concerning the noise and disruptions from the upstairs tenants. On June 3, 2019 he sent a letter to the tenant concerning the complaint he received the evening before concerning the loud music coming from their unit. He further testified that he received text messages for the period May 23 – September 13, 2019 from [REDACTED], one of the tenants who was living in the basement unit concerning the noise from the upstairs unit. The tenants in the basement unit moved out the end of September because of the behavior of the tenant.
10. The landlord testified that he served a termination notice on the tenant under section 24 of the Act on September 18, 2019 to vacate the unit by September 24, 2019.
11. The landlord further testified that he contacted the police on September 30, 2019 or October 1, 2019 because when he was on site he felt threatened by the tenant and another person. They were belligerent and yelling about the termination notice he served. They were making comments about the damages they were going to do to the unit.
12. The landlord submitted into evidence a copy of the termination notice (LL #2), a written statement from [REDACTED], the tenant who lived in the basement

unit (LL #3), a copy of the letter addressed to the tenant dated June 3, 2019 (LL #4), copies of the text messages from [REDACTED] (LL #5) and a Royal Newfoundland Constabulary business card containing file number [REDACTED]
[REDACTED].

Witness Position

13. [REDACTED], the tenant who lived in the basement unit and the witness for the landlord, testified that when the tenant moved into the unit it wasn't bad. There were some fights between the tenant and his girlfriend and a few between the tenant and other visitors. The more the fights went on the worst they would get. You could hear things being thrown around or furniture being tipped over. Sometimes you could hear screaming. This normally would happen really late at night. The noise would get so loud it was impossible to sleep. It didn't happen often, at least once a week, but often enough that it made her wonder what was going on upstairs. [REDACTED] also testified that there would be fights just outside their living room or bedroom window between the tenant and another tenant living in the building. There would be no violence but threatening of violence. This would happen early in the day or midday. When the fights took place on the lawn her roommate would call the police. On one occasion she called the police.
14. [REDACTED] further testified that in order to get into her unit and the tenant's unit they had to share a common porch. On September 14, 2019 around 9:00 p.m. she heard two men and a woman in the porch. They were trying to take the tenant's door off hinges. She notified the landlord and she called the police. After this incident her and her roommate had a discussion with the landlord about terminating their lease 2 months early. The landlord agreed. They moved out on September 30, 2019 but the last 2 weeks she was living in the unit she would spend the nights at her brother's place.

Tenant Position

15. The tenant testified that he has Tourette syndrome and noise is a part of the syndrome. He doesn't believe what the landlord and witness stated. But he acknowledges having arguments outside on the lawn with another tenant living in the building. Some of the arguments were loud. He said he is planning on moving out by the end of the month.

Analysis

16. I have reviewed the testimony and the evidence of the landlord, the tenant and the witness. I have determined that there are 2 issues that need to be addressed; (i) was the tenant interfering with the other tenants; and (ii) is the termination notice a proper notice. I find that the witness's evidence is credible

in that the tenant was interfering with their peaceful enjoyment to the point the landlord allowed them to move out 2 months early because of the tenant's behavior. The tenant admits to having arguments on the lawn with another tenant who lives in the building.

17. Section 10.(1) 7.(a) doesn't allow for the tenant to unreasonably interfere with the rights or reasonable privacy of the landlord and other tenants in the residential premises. The tenant was interfering with the rights of the tenants in the basement unit as determined in paragraph 17 above and the landlord had grounds to terminate the tenancy under section 24 of the Act.
18. 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

19. 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.

Issue 2: Payment of rent - \$750.00

20. In determining an application for the payment of rent, the landlord is required to establish the rental rate and the payment record.

Landlord Position

21. The landlord testified that he received the rent for the months of May – September 2019 from Advanced Education Skills and Labour (AESL) on behalf the tenant. He is only seeking the tenant's portion in the amount of \$375.00 per month for the months of October and November 2019.

Tenant Position

22. The tenant testified that when he contacted AESL and told them he received a termination notice. They stopped paying the rent.

Analysis

23. I have reviewed the testimony and evidence of the landlord and the tenant. I have determined that there is one issue that needs to be addressed; is rent owing. I find the rent was paid in full up to September 2019. No rent was paid for the months of October and November 2019. Therefore, rent is owed in the amount of \$375.00 for October 2019. Rent for the month of November 2019 can only be awarded up and including the day of the hearing (November 18, 2019). The amount of rent owing for November 1 – 18, 2019 is \$221.94 (\$375.00 x 12 months = \$4500.00 ÷ 365 days = \$12.33 per day x 18 days = \$221.94). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$12.33 beginning on November 19, 2019 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

24. The landlord's claim for rent succeeds as per the following:

a. Rent owing for October 2019	\$375.00
b. Rent owing for November 1 – 18, 2019	\$221.94
c. Total rent owing	\$596.94
d. A daily rate beginning November 19, 2019	\$12.33

Issue 3: Late fees - \$75.00

Landlord Position

25. The landlord testified he is seeking payment of late fees in the amount of \$75.00 as he has not received the rent for October and November 2019.

Analysis

26. The rental arrears has been established in paragraph 24 above. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1st day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period. As the rent has been in arrears since October 2019 the late fees have exceeded the maximum amount of \$75.00.

Decision

27. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 4: Application for Security Deposit

28. Under the authority of Section 47.(j) the director may authorize a landlord to offset money a tenant owes to the landlord against money the landlord owes to the tenant. Further under subsection (m), the director has the authority to determine the disposition of the security deposit.

Landlord Position

29. The landlord testified a \$375.00 security deposit was paid in May 2019.

Tenant Position

30. The tenant testified that a security deposit was paid.

Analysis

31. A security deposit was paid in May 2019. As the landlord has been successful in his claim for the payment of rent and late fees, he shall retain the \$375.00 security deposit as outlined in this decision and order.

Decision

32. The landlord shall retain the security deposit as outlined in this decision and attached order.

Issue 5: Hearing Expenses - \$33.11

33. 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*.

Landlord Position

34. The landlord paid an application filing fee in the amount of \$20.00 and \$13.11 for registered mail for a total of \$33.11. The landlord is seeking these costs.

Analysis

35. The cost the landlord incurred to make the application and serve the application for dispute resolution are considered reasonable expenses as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment*

and NSF. As the landlord's claim was successful, the tenant is responsible to pay the landlord's hearing expenses in the amount of \$33.11.

Decision

36. The tenant shall pay the landlord's hearing expenses in the amount of \$33.11.

Summary of Decision

37. The landlord is entitled to the following:

- a) Payment of rent..... \$596.94
- b) Late fees \$75.00
- c) Hearing expenses \$33.11
- d) **Less the security deposit**..... (375.00)
- e) **Total owing to the landlord** **\$330.05**
- f) Vacant Possession of the rented premises;
- g) A daily rate of rent in the amount of \$12.33 beginning November 19, 2019 and continuing until the day the landlord obtains possession of the rental unit;
- h) Any cost incurred should the landlord be required to have the Sheriff enforce the attached Order of Possession.

November 25, 2019

Date

[Redacted]
Residential Tenancies Section