

Residential Tenancies Tribunal

[REDACTED] Decision 20-0086-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:30 p.m. on March 5, 2020 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereafter referred to the landlord participated in the hearing through conference call.
3. The respondent, [REDACTED], hereafter referred to as the tenant, did not attend the hearing.

Preliminary Matters

4. The landlord called [REDACTED], the upstairs tenant as a witness. The witness attended by conference call.
5. 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*. According to Rule 29.05(2)(a) a respondent to an application must be served with the 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 the hearing was electronically served on the tenant on February 18, 2020. The tenant has had 15 days to provide a response. The landlord submitted a copy of the e-mail sent to the tenant on February 18, 2019 along with a copy of the rental agreement. The tenant provided her e-mail address in the rental agreement. 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 her absence.

Issues before the Tribunal

7. The landlord is seeking the following:
 - a. Vacant possession of the rental premises;
 - b. Hearing expenses.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
9. Also relevant and considered in this case are Sections 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

10. 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 other tenants.

Landlord Position

11. The landlord testified that the tenant moved into the unit on November 20, 2019 on a month to month tenancy with rent set at \$800.00 per month due on the 1st of each month. She has received multiple complaints from the upstairs tenant about the traffic going to the tenant's unit all hours of the night, every night. The people going to the unit would knock on the tenant's window or door and they would sometimes scream at the tenant trying to get into her unit. She testified that she was staying at the upstairs unit for about 10 days when the tenant first moved in and she has observed the constant traffic. She has

brought this issue to the tenant face to face, through phone calls, text messages and e-mails.

12. The landlord testified that she served the tenant a termination notice under section 24 on February 4, 2020 to vacate February 10, 2020. She sent the notice by e-mail and a copy was sent by a text message. The landlord submitted a copy of the termination notice (LL #2) and copies of text messages between the landlord and the tenant (LL #3).
13. [REDACTED], witness for the landlord testified that he hasn't slept through the night in six weeks because of the constant traffic going to the upstairs unit all hours of the night every night. He is awakened by the banging and slamming of doors and the loud voices. This happens usually between midnight and 4:00 a.m. He has moved rooms because of the noise. He said if this continues he will have to move out of his unit.

Analysis

14. I have reviewed the testimony and evidence of the landlord and the witness in this matter. I find that there is one issue that needs to be addressed; did the tenant interfere with the peaceful enjoyment of the tenant living in the upstairs unit. I find that the witness' testimony is believable. There are people constantly going to the upstairs unit in the early hours of the morning and they are slamming door. The constant traffic and the slamming of the doors is waking the tenant from his sleep.
15. 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 tenant was interfering with the peaceful enjoyment of the upstairs tenant as there are people constantly going to her unit in the early hours of the morning. They are slamming doors and this is waking the tenant from his sleep. The landlord had grounds to terminate the tenancy under section 24 of the Act.
16. 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. The termination notice is a valid notice.

Decision

17. The 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: Hearing expenses

18. 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

19. The landlord paid \$20.00 to file the application for Dispute Resolution and the landlord is seeking this cost.

Analysis

20. The cost the landlord incurred to file the application is considered a reasonable expense as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. As the landlord's claim has been successful, the tenant shall pay the landlord's hearing expenses in the amount of \$20.00.

Decision

21. The claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

22. The landlord is entitled to the following:

- a) Hearing expenses\$20.00
- b) Vacant possession of the property;
- c) Any cost incurred should the landlord be required to have the Sheriff enforce the attached Order of Possession.

March 13, 2020

Date

Residential Tenancies Section