



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KAHL REALTY & PROPERTY
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and utilities pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that on April 10, 2019, they received a copy of the landlord's dispute resolution hearing package and written evidence sent by the landlord by registered mail on March 22, 2019, I find that the tenant was duly served with this material in accordance with sections 88 and 89 of the *Act*. The tenant testified that they had not had enough time after receipt of the landlord's documents to assemble and arrange their own written evidence for consideration. As the tenant had possession of the landlord's documents over three weeks before this hearing, I find that there was ample time for the tenant to have submitted any written evidence they wished to have taken into consideration for this hearing.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and utilities? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of

the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenant, a co-tenant ST (the co-tenant), and the landlord signed a one-year fixed term Residential Tenancy Agreement (the Agreement) on June 13, 2018 for a tenancy scheduled to run from July 1, 2018 until June 30, 2019. Monthly rent was set at \$2,700.00, payable in advance on the first of each month, plus utilities. The landlord continues to hold the \$1,350.00 security deposit for this tenancy.

The tenant testified that she vacated the rental unit on February 27, 2019, as a result of interpersonal disagreements with the co-tenant. By that time, the tenant said that the two tenants had obtained a third person to share one-third of the costs of the rental unit with the landlord's agreement.

After the tenant vacated the rental unit, the landlord testified that the co-tenant paid their one-half of the monthly rent for March and April 2019, but no portion of the utility bills for this rental unit. The landlord gave undisputed sworn testimony that they advised the remaining co-tenant that they would release the tenants from their obligations under the fixed term Agreement if the landlord were able to find another tenant to enter into a new tenancy agreement for the remaining portion of their term. When the landlord was able to find a tenant willing to move into the rental unit, the landlord and the co-tenant signed a mutual agreement to end tenancy on March 22, 2019, which ended this tenancy on April 30, 2019, by which time the co-tenant vacated the rental unit. The landlord testified that the new tenant moved into this rental unit on May 1, 2019, for a monthly rent of \$2,600.00.

The landlord's application for a monetary award of \$3,768.21 included the following items identified in the landlord's written evidence:

Item	Amount
Unpaid Hydro Bills	\$530.65
Unpaid Municipal Water, Sewer and Garbage Bill	1,378.57
Unpaid Gas Bill	18.43
Unpaid Internet Bill	208.73
Total of Above Items	\$2,136.38

Although the landlord provided no Monetary Order Worksheet to support their application, the landlord gave sworn testimony at this hearing that their application also included a request for payment of \$2,700.00 in unpaid rent still owing for the months of March and April 2019, the last two months of this tenancy. This amount represented the tenant's half of the rent for the rental unit for those two months. The landlord also requested the recovery of the \$100.00 filing fee from the tenant.

The tenant gave sworn testimony regarding the difficult circumstances that prompted the tenant to vacate the rental unit. The tenant testified that the co-tenant took some of her possessions, furniture and clothes and sold them on-line. The tenant said that the landlord never fixed a window in their bedroom which also made it uncomfortable for the tenant to stay in this rental unit.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant was responsible for losses incurred by the landlord.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.” There is also a requirement that tenants pay utilities for which they had agreed to become responsible.

Although the tenant was no longer living in the rental unit for the months of March and April, by co-signing the Agreement, both tenants became jointly and severally liable for the responsibilities they agreed to assume as tenants. Thus, the landlord can pursue a claim of unpaid rent and utilities against either or both tenants because they both signed the fixed term Agreement. As mentioned at the hearing, each of the tenants have the

full authority to act on behalf of the other tenant, which includes a tenant's right to enter into a mutual agreement to end a tenancy. These rights also apply to the release of the security deposit for the tenancy.

In this case, I accept the undisputed evidence that the tenant has not paid rent for the months of March and April 2019, and that the landlord has incurred a loss in rent of \$2,700.00 for these months of the fixed term tenancy.

As I am satisfied that the billing periods for the hydro, gas, water, sewage and garbage bills coincide with times for which the tenant was responsible for utility payments, I find that the landlord has demonstrated to the extent required entitlement to the remaining \$1,068.21 of the landlord's total claim of \$3,768.21.

As was noted at the hearing and although it has no bearing on my monetary award, I would not include entitlement to an internet bill from a telecommunications company that was for an account in the co-tenant's name. The landlord has provided no proof that any type of action could be taken by the telecommunications company specific to this property which would require the landlord to pay this bill in the event that the co-tenant fails to pay this \$208.73 bill.

At any rate, the landlord's demonstrated loss of rent and utilities surpass the \$3,768.21 claimed by the landlord. For this reason, I allow the landlord's claim for a monetary award of \$3,768.21. As the landlord has been successful in this application, the landlord is also entitled to recover the \$100.00 filing fee for this application from the tenant.

As the landlord continues to hold the \$1,350.00 security deposit for this tenancy, I order the landlord to retain that deposit in partial satisfaction of the monetary award issued in this decision.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and utilities, and the filing fee for this application, and to retain the security deposit for this tenancy:

Item	Amount
Unpaid Rent March and April 2019	\$2,700.00

Remainder of Claim for Unpaid Hydro, Municipal Water, Sewer, Garbage and Gas Bills	1,068.21
Less Security Deposit	-1,350.00
Filing Fee	100.00
Total Monetary Order	\$2,518.21

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 07, 2019

Residential Tenancy Branch