



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, MNRL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking:

- An Order of Possession for the rental unit because the Tenant(s) gave written notice to end the tenancy;
- Monetary compensation for outstanding rent;
- Authorization to withhold the security deposit or pet damage deposit, or both, in partial satisfaction of rent owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was initially attended by only the Agent, who provided affirmed testimony. Neither the Tenants nor an agent acting on their behalf attended at the start of the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither of the Tenants nor an agent acting on their behalf were in attendance at the start of the hearing, I confirmed service of these documents as explained below.

The Agent testified that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, the Notice of Hearing, and the Landlord’s documentary evidence, were sent to each of the Tenants individually by registered mail at the rental unit address on April 22, 2020. The Agent provided me with the registered mail tracking numbers and the Canada Post website confirms that the registered mail was sent as described above and received on April 23, 2020. As a result, I find that the Tenants were served in accordance with the *Act* and the Rules of Procedure on April 23, 2020. However, I am aware that Canada Post is currently delivering some types of mail to mailboxes, instead of releasing it directly to individuals in light of the current pandemic and the state of emergency. As a result, I find that even if the registered mail was not personally delivered on April 23, 2020, as indicated by the Canada Post website, and

was instead delivered to a mailbox, that it was deemed received on April 27, 2020, five days after it was sent by registered mail, pursuant to section 90 (a) of the *Act*. In any event, the Tenant S.N. attended the hearing at approximately 9:48 A.M. and confirmed that the registered mail packages were received.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the request of the Landlord and the Tenant S.N., copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application and the hearing. As no email address was available for the Tenant K.N., and they did not attend the hearing, a copy of the decision and any orders issued in favor of the Tenants will be mailed to them at the rental unit address.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for the rental unit pursuant to section 55 (2) (a) of the *Act*?

Is the Landlord entitled to compensation for unpaid rent pursuant to sections 26 and 67 of the *Act* and to withhold the security deposit and pet damage deposit against any amounts owed?

Is the Landlord entitled to recovery of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The parties agreed that \$1,500.00 in rent is owed on the first day of each month and that the Landlord currently holds a \$650 damage deposit and a \$100.00 pet deposit for the rental unit. A tenancy agreement matching these terms was submitted for my consideration. Although the parties agreed that \$2,250.00 is currently owed in outstanding rent, the Tenant S.N. argued that this amount is owed by K.N., not themselves, as they have paid their portion of rent owed to the Landlord.

The Landlord stated that the Tenant K.N. gave notice to end the tenancy effective April 30, 2020, and that they believe they have already moved out as they have not seen them at the rental unit and have had no further contact with them. The Landlord

sought an Order of Possession for the rental unit as S.N. has not moved out. In support of this testimony the Landlord pointed to a text message from K.N. dated March 31, 2020, wherein the Tenant K.N. stated that they are sending the text message as a written one month notice to end the tenancy.

The Tenant S.N. stated that the Tenant K.N. never advised them that they were ending the tenancy or provided them with a copy of this notice. The Tenant S.N. stated that they were not even aware of it until they received the Notice of Dispute Resolution Proceeding Package and disputed that K.N. has moved out. The Tenant S.N. stated that although K.N. often stays elsewhere, they still have belongings in the rental unit and therefore have not vacated or moved out. The Tenant S.N. stated that they are in the process of looking for alternate accommodation but cannot vacate until appropriate housing is first secured for their parent, who also resides with them, and that this accommodation will likely not be secured until August 2020.

Analysis

Section 26 (1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

The parties agreed in the hearing that \$2,250.00 in rent is currently outstanding, and there is no evidence before me that the Tenants had a right under the *Act* to deduct or withhold this amount from rent. As a result, I find that the Landlord is entitled to recovery of the \$2,250.00 in outstanding rent owed. Although the Tenant S.N. argued that this rent is owed by the Tenant K.N., no themselves, Residential Tenancy Policy Guideline (Policy Guideline) #13 defines co-tenants are two or more tenants who rent the same rental unit under the same tenancy agreement and states that generally co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. "Jointly and severally" means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.

As the Tenants S.N. and K.N. rent one rental unit under the same tenancy agreement, I find that they are co-tenants under the *Act* and as the tenancy agreement does not state otherwise, I find that they are therefore jointly and severally liable for the payment of rent. Policy Guideline #13 goes on to say that co-tenants are jointly and severally responsible for payment of rent when it is due and that if one tenant is unable to pay

their portion of the rent, the other must pay the full amount. As a result, I find that both S.N. and K.N. are responsible for the full amount of rent owed, regardless of what amounts or rent have already been paid and by whom.

Although the Landlord sought an Order of Possession for the rental unit pursuant to section 55 (2)(a) of the *Act*, I find that the text message sent by the Tenant K.N. on March 31, 2020, does not meet the requirements set out under section 52 of the *Act* as it is not signed, does not state the effective date for the end of the tenancy, and does not contain the address for the rental unit. As a result, I find that the text message does not constitute a valid notice to end tenancy under the *Act* and that the Tenants therefore did not end the tenancy pursuant to section 45 of the *Act* as a result of this text message. The Landlord's Application seeking an Order of Possession for the rental unit is therefore dismissed without leave to reapply and I order that the tenancy continue in full force and effect until it is ended by one of the parties in accordance with the *Act*. The Tenants should be aware that the full terms of the tenancy agreement remain in effect, including but not limited to the payment of rent, and that the Tenants remain jointly and severally liable under the *Act*, regardless of whether they both reside in the rental unit.

As the Landlord was successful in the monetary portion of their claim, I award them recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*. I also authorise them to withhold the \$750.00 in deposits held, in partial repayment of the amounts owed. As a result, the Landlord is entitled to a Monetary Order in the amount of \$1,600.00, pursuant to section 67 of the *Act*; \$2,250.00 in outstanding rent, plus \$100.00 for recovery of the filing fee, less the \$750.00 in deposit held.

Conclusion

The Landlord's Application seeking an Order of Possession for the rental unit is dismissed without leave to reapply. I therefore order that the tenancy continue in full force and effect until it is ended by one of the parties in accordance with the *Act*.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of **\$1,600.00**. The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: June 8, 2020

Residential Tenancy Branch