



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL MNRL-S

Introduction

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

- Authorization to retain the security deposit in partial satisfaction of the monetary orders sought pursuant to section 38;
- an order of possession for landlords' use of property pursuant to section 55; and
- a monetary order for unpaid rent in the amount of \$4,270 pursuant to section 67.

Both tenants attended the hearing. Landlord SN attended the hearing. He was assisted by an agent ("**AK**"). All were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlords called two witnesses: the realtor for the landlords ("**FS**") and the realtor for the purchaser of the rental unit ("**AJ**").

Preliminary Issue - Service

Tenant MT testified that she was not served with the landlords' notice of dispute resolution form and supporting evidence package. She testified that they were sent to the rental unit, where tenant WT (MT's father) resided, but that she had vacated the rental unit by this point. She testified that she did not provide the landlords with her forwarding address, but that they had her email and cell number.

Despite this deficiency in service, MT stated that she was aware of the nature of the landlords' claim, as WT was able to read her the contents of the application over the phone. She also submitted documentary evidence in response to the landlords' application.

The parties did not raise any other issues regarding service of documents.

Section 71(2)(c) of the Act states:

Director's orders: delivery and service of documents

71(2) In addition to the authority under subsection (1), the director may make any of the following orders:

- (c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

In light of the facts that WT received the landlords' documents, MT did not provide a forwarding address to the landlords after she vacated the rental unit, was aware of the nature of the landlord's application, and submitted documentary evidence in advance of the application, I find it appropriate to deem that MT was served with the landlords' application materials in accordance with the Act.

All parties are deemed served with the required documents in accordance with the Act.

Preliminary Issue – Order of Possession

At the outset of the hearing, the parties advised me that the tenants provided them with vacant possession of the rental unit on May 29, 2020 (MT vacated on April 1, 2020 and WT vacated on May 29, 2020). As such, the landlords' agent advised me that the landlords no longer require an order of possession.

As such, I dismiss the landlords' application for an order of possession, without leave to reapply.

Issues to be Decided

Are the landlords entitled to:

- 1) a monetary order for \$4,270; and
- 2) retain the security deposit in partial satisfaction of the monetary order sought?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting September 1, 2013 and ending August 31, 2014. Following the end date, the tenancy agreement converted to a month to month tenancy pursuant to the tenancy agreement and section 44(3) of the Act. At the end of the tenancy, monthly rent was \$1,685 payable on the first of each month. The tenants paid the landlords a security deposit of \$825.

The landlords served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "**Notice**") on February 27, 2020. It specified an effective date of May 1, 2020. It lists the reason for ending the tenancy as:

All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give this Notice because the purchaser or close family member intends in good faith to occupy the rental unit.

The tenants did not dispute the Notice.

As stated above, MT vacated the rental unit on April 1, 2020. However, due to the COVID-19 pandemic, WT did not vacate the rental unit on the effective date of the Notice. Rather, he vacated on May 29, 2020.

The purchaser's realtor testified that, as a result of WT not vacating the rental unit, the closing date of the sale of the rental unit was pushed back to June 17, 2020.

AK testified that the tenants did not pay any rent for March 2020 or May 2020, and only \$860 for April 2020. In total, he testified that the tenants are \$4,270 in rental arrears.

MT disputed this. She testified that she e-transferred the landlords \$860 on March 1, 2020 (she submitted documentary evidence supporting this). She testified that AK told her to only transfer that amount, and that he would keep the security deposit of \$825 in satisfaction of the rest of the March's rent. AK did not deny this.

MT additionally testified that the landlords have not provided the tenants with an amount of money equal to one month's rent, in accordance with section 51(1) of the Act. AK did not deny this. Rather, he testified that he did not believe that the tenants were entitled to this amount, as they did not provide vacant possession of rental unit to the landlord on the effective date of the Notice.

The tenants argued that the landlords were not entitled to May 2020 rent, as, to their knowledge, the landlords had sold the rental unit by this time. The argued that the purchasers of the rental unit would need to make their own application to obtain May 2020 rent. AK reiterated that, as stated above, the closing date for the sale of the property was pushed back to June 17, 2020. As such, he argued, the landlords are entitled to May 2020 rent.

AK testified that the tenants left garbage in the rental unit after they vacated and that the landlord suffered damage as a result of them not leaving on the effective date of the Notice. However, the landlord has not claimed any compensation for these damages in this application, so I will not recount the details of AK's testimony, as they are not relevant to this application.

Analysis

As the tenants did not dispute the Notice, per section 49(9), the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice: May 1, 2020. As such, I find that the tenancy ended on May 1, 2020.

Section 51(1) states:

Tenant's compensation: section 49 notice

51(1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

As such, the tenants are entitled to receive \$1,685 from the landlords. The landlords have not provided them this amount. Accordingly, this amount will be deducted from any arrears the tenants owe.

I accept MT's testimony that she paid the landlords \$860 on March 1, 2020. I accept the undisputed evidence that the tenants did not make any other payments to the landlords.

I accept MT's testimony that AK required her to use the security deposit as payment for the balance of March 2020's rent. I note that section 21 of the Act requires written consent of a landlord if a tenant wants to apply the security deposit to the monthly rent but contains no requirement if the situation is reversed. In any event, I will address the security deposit below.

Section 57 sets out what is to occur if a tenant does not leave rental property when the tenancy ends:

What happens if a tenant does not leave when tenancy ended

"**overholding tenant**" means a tenant who continues to occupy a rental unit after the tenant's tenancy is ended.

(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

As the tenancy ended on May 1, 2020, tenant MT is an overholding tenant and must compensate the tenants for the period of his overholding (the month of May 2020).

I note that, ordinarily, co-tenants are jointly and severally liable (meaning that if one tenant causes a landlord damage or loss, both tenants are liable). However, Policy Guideline 13 states:

Co-tenants are usually jointly and severally liable for any debts or damages relating to the tenancy, unless the tenancy agreement states otherwise.

However, after a tenancy ends, a tenancy agreement no longer exists and co-tenants cease being co-tenants as of the last date of the tenancy. As such, in instances where one tenant is overholding and another tenant is not, the tenants cannot be jointly and severally liable for damages payable due to the overholding, as they are no longer co-tenants and the damage caused to the landlord arises after the tenancy's end.

In the present circumstances, as the tenancy is over, MT (the non-overholding tenant) is not liable for any compensation owing to the landlords as a result of the overholding of WT.

I accept the purchaser's realtor testimony that, due to WT's overholding, the closing date of the sale of the rental unit was delayed until June 17, 2020. Accordingly, the landlords are entitled to receive compensation from WT as a result of his overholding.

As a result of his overholding, I find that WT must pay the landlords \$1,685, representing payment for use of the rental unit for May 2020.

Section 72(2) of the Act permits an arbitrator to allow a landlord to keep a security deposit in satisfaction of any monetary order made. As such, it is not necessary for me to determine if AK was permitted to demand that the balance of March 2020's rent be paid by using the security deposit or not.

Even if AK was not permitted to do so, I would order that the landlords could retain the security deposit in partial satisfaction of the monetary orders made above.

In summary, I find that the landlord is entitled to a monetary order for \$1,685, representing the following:

Description	Amount	Liability/On behalf of
March 2020 Rent	\$1,685.00	Both tenants
April 2020 Rent	\$1,685.00	Both tenants
Partial March 2020 rent payment	-\$860.00	Both tenants
One Month's Rent credit (per section 51(1))	-\$1,685.00	Both tenants
Security deposit credit	-\$825.00	Both tenants
Subtotal as of end of tenancy	\$0.00	Both tenants
Overholding for May 2020	\$1,685.00	Tenant WT
Total	\$1,685.00	Tenant WT

Conclusion

Pursuant to sections 67 of the Act, I order that tenant WT pay the landlords \$1,685.

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 18, 2020

Residential Tenancy Branch