



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding K&L VENTURES
and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes OPN, MNDL-S, MNRL-S, FF

Introduction

This hearing dealt with the adjourned Application for Dispute Resolution filed by the Landlord under the Residential Tenancy Act (the “Act”), for an order of possession to enforce the Tenants’ Notice to End tenancy, for a monetary order for unpaid rent or utilities, for a monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, for permission to retain the security deposit and pet damage deposit for this tenancy, and to recover the cost of filing the application. The matter was set for a conference call.

The Landlord and their Agent (the “Landlord”) and three Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties agreed that they had exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters – Issue Withdrawal

During the hearing, the Landlord withdrew their request for an order of possession, stating that it was no longer required as the last of the three Tenants moved out as of May 31, 2020.

I will proceed with this hearing on the Landlord's remaining claims for a monetary order for unpaid rent and utilities, for permission to retain the security deposit, and to recover the filing fee for this application.

Issues to be Decided

- Is the Landlord entitled to a monetary order for rent and utilities?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement records that this tenancy began on August 31, 2019, as a nine-month fixed term tenancy, that rolled into a month to month tenancy at the end of the initial fixed term. That rent in the amount of \$2,850.00, was to be paid by the first day of each month, and that the Landlord is holding a \$1,425.00 security deposit for this tenancy. The Landlord submitted a copy of the tenancy agreement and attached one-page addendum into documentary evidence.

The Landlord testified that the Tenants had not paid the full rent for April and May 2020, in the amount of \$2,850.00, consisting of \$950.00 for April 2020 and \$1,900.00 for May 2020. The Landlord is requesting a monetary order for the outstanding rent for April and May 2020, as well as permission to retain the security deposit for this tenancy.

The Tenants agreed that they have not paid the full rent for April and May 2020 and agreed that they owe the \$950.00 for April but argued that the full rent for May 2020 should not be due for this tenancy.

The Tenants testified that they gave notice to end their tenancy as of April 30, 2020, and that two of the three Tenants moved out in accordance with that notice. The third Tenant testified that due to the COVID-19 pandemic, they were unable to move out as planned and ended up staying in the rental unit for the month of May 2020. The Tenant and Landlord agreed that \$950.00 had been paid by the third Tenant towards the May

2020 rent. Two of the three Tenants to this tenancy testified that their portions of the rent for this tenancy should not be due as they had moved out in accordance with their notice to end the tenancy. The Tenants submitted two copies of their email notice to end tenancy into documentary evidence.

The Landlord testified that the Tenants left \$462.76 in unpaid utility bills for this tenancy, consisting of \$175.05 in gas, \$200.00 in hydro and \$87.71 in water. The Landlord submitted two copies of gas bills and a copy of a demand letter into documentary evidence.

The Tenants testified that they did not pay bills the Landlord has claimed for as they had an agreement with the Landlord, as of March 27, 2020, to wave the remainder of the utilities for this tenancy. The Tenants' submitted a copy of an email offer to wave utilities into documentary evidence.

Analysis

Based on the above, the oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

I have reviewed the Tenancy agreement, and I find that these three Tenants entered into a co-tenancy with the Landlord beginning August 31, 2020.

I acknowledge the Tenants' argument that they were each responsible for paying their portion of the rent, and they had each given individual notice to end this tenancy on different dates and should therefore not be responsible for this tenancy after their respective notice dates.

The legal concept of co-tenants was explained to these parties during the hearing; co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement. 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. After reviewing the tenancy agreement, I find that these Tenants are co-tenants to this tenancy and that as co-tenants, the actions of any one of them was legally binding on the others.

In this case, when the first Tenant gave written notice to end this tenancy, that notice obligated the other two Tenants to move-out of the rental unit on the end of tenancy date indicated on that notice, which was April 30, 2020. The desire or ability to move out of the rental unit, of the other two Tenants, became irrelevant, as the first Tenant legally end the tenancy agreement for all three Tenants when they issued their notice. Had one of these three Tenants wished to continue living in this rental unit, they need to enter into their own separate and new tenancy agreement with the Landlord before this tenancy ended.

However, the action of the Third tenant, in this case, of overholding the rental unit past the end of this tenancy date, without entering into a new tenancy agreement, created a legal liability on all three Tenants to pay the rent for the period of the overhold.

At the end of this tenancy all three tenants were responsible for ensuring that the rental unit was returned to the Landlord clean, undamaged and vacant on the date indicated on the notice to end tenancy. It was irresponsible of two of these three Tenants to just pack up their belongings and move-out, knowing that the third Tenant to this tenancy would not be returning possession of the rental unit in accordance with the notice they issued to end the tenancy.

Accordingly, I accept the testimony of these parties, and I find that this tenancy ended on May 31, 2020, the day the last of the three Tenants to this tenancy agreement vacated the rental unit.

Section 26(1) of the *Act* states that a tenant must pay the rent when it is due under the tenancy agreement.

Rules about payment and non-payment of rent

26 (1) *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.*

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) Subsection (3) (a) does not apply if

*(a)the landlord has a court order authorizing the action, or
(b)the tenant has abandoned the rental unit and the landlord
complies with the regulations.*

In this case, I accept the agreed-upon testimony of these parties that the rent was not paid in full for April and May 2020. I find that the Tenants breached section 26 of the *Act* when they did not pay the rent as required under the tenancy agreement.

I find that the Landlord has established an entitlement to a monetary award in the amount of \$2,850.00, comprised of \$950.00 in rent for April 2020, and \$1,900.00 in rent for May 2020. I grant the Landlord permission to retain the security deposit for this tenancy in partial satisfaction of this award.

In regard to the Landlord's claim for compensation for unpaid utilities, in the amount of \$462.76, for gas, hydro and water for this tenancy. I accept the agreed-upon testimony of these parties that the Tenants had not paid these bills for this tenancy. Awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I find that the Tenants were in breach of section 26 of the *Act* when they did not pay the utility bills in accordance with their tenancy agreement. I accept that the Landlord has

paid these utility bills and that they have taken all appropriate steps to minimize their loss due to the Tenants' breach.

However, I have reviewed the Landlord documentary evidence, and I find that the Landlord has not submitted sufficient evidence to support the value of the utility bills they are claiming for in this proceeding. The Landlord has submitted two copies of gas bills for February and March 2020, in the amount of \$125.05, and a demand letter from themselves to the Tenants to support their remainder of this portion of their claim. I find the submission of a copy of their demand letter to be insufficient evidence to support the value of unpaid bills for this tenancy. In the absence of a billing from the water and hydro companies, I find the Landlord has not proven, to my satisfaction, the value of those losses. Accordingly, I find that the Landlord is entitled to the amounts that they have satisfactorily proven in this proceeding, and I award the Landlord \$125.05 in the recovery of unpaid utility bills for this tenancy.

I acknowledge the Tenants claim that they had received an offer to waive all future utility bill payments if they brought their past due utility account with the Landlord, up to date. I have reviewed the email evidence submitted by the Tenants, and I find that an email offer had been made by this Landlord's Agent, that did, in fact, offer to waive all future utility bills, if the Tenants were to bring their account current. However, I also find that there is no evidence before me to show that the Tenants had accepted this offer or that a formal agreement had been created by these parties that reflects this offer. In the absence of a formal written agreement to remove the requirement to pay the utilities from this tenancy or proof of an action by either party to implement this emailed offer, I find that this email offer in no way removed the requirement on the Tenants to pay the utilities for this tenancy.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing.

I grant the Landlord a monetary order of \$1,650.05, consisting of \$2,850.00 in unpaid rent, \$125.05 in unpaid utilities and \$100.00 in the recovery of the filing fee for this hearing, less the \$1,425.00 security deposit they are holding for this tenancy.

Conclusion

I find for the Landlord under sections 26, 65 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$1,650.05**. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant 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: July 7, 2020

Residential Tenancy Branch