



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, OPC, MNDC, MND, MNR, FF

Introduction

This hearing dealt with an application by the landlord. At the outset the hearing was informed that the tenants had vacated the rental unit on January 16, 2009. Therefore, as the tenants have moved from the rental unit, this decision will only deal with matters pertaining to the monetary claim. Thus the landlord's application is revised to seeking a monetary order to recover rental arrears, a monetary order for damage to the rental unit, a monetary order for loss and inclusive of recovery of the filing fee associated with this application.

Both parties attended the hearing and gave testimony under solemn affirmation to be truthful.

The landlord personally delivered a Notice for Dispute Resolution to the tenant. However, neither party delivered any evidence to the other. Therefore, what evidence was provided to the Branch has been disregarded in its entirety. None the less, at the outset of this hearing both parties testified they wanted to proceed and give verbal testimony upon which, they testified, they wanted a decision based and binding on both parties.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on February 1, 2008. Rent in the amount of \$1100 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord did not collect a security deposit from the tenant. The tenant failed to pay the required rent in the month of January 2009 and on January 2, 2009 the landlord and tenant agree the tenant was served with a notice to end tenancy for non-payment of rent, effective January 12, 2009. The tenants moved out on January 16, 2009.

The landlord's revised claim is as follows:

Rent for January 2009	\$1100.00
Utility arrears to date – GAS	\$ 181.25
Utility arrears to date – Hydro / Electrical	\$ 299.40
Replacement of kitchen counter top	\$ 750.00
Cleanup costs subsequent to tenant's move – 40 garbage bags	\$ 40.00
Re-imbursement for call out of electrical inspector by the tenants, billed to the landlord	\$ 140.00
Recovery of Filing fee – based on application's claim	\$ 100.00
Total revised claim by landlord	\$2610.65

The landlord and tenant both agree on the first two (2) items of the landlord's claim.

The tenant's testimony is that the third item (Hydro) should be 20% less, or \$239.52 as another tenant in the building, it was agreed, was forced to use excess electrical power to heat their unit during the winter months, as they had no other source of heat.

The landlord claims the tenants caused irreparable water damage to the 20 year old kitchen countertop during the tenancy. The countertop is comprised of laminated

pressed board. His claim is based on one half (1/2) the verbal estimate of \$1500 for a brand new kitchen countertop, given the countertop was 20 years old. The tenants disagree the countertop was left in worse condition than when they moved in if one factors in normal wear and tear to an already aging countertop. The tenant claims the landlord had said at the outset of the tenancy that it needed replacement, which did not materialize during the tenancy, and because of which contributed to further deterioration. The tenant's testimony, however, stated they may have been partially responsible for some of the damage alleged by the landlord in their attempts to control water from their dishwasher.

The landlord claims that the tenants are responsible for disposal of twenty (20) garbage bags of refuse left behind by the tenants after they moved. The City has taken the bags, for which he expects he will be billed at \$2 per bag, at some point. The landlord was not able to provide an invoice from the City, and said he has not received such to date. The tenants disagree and stated they left no more than 5 bags of garbage.

The landlord claims that the tenants took it upon themselves to call an electrical inspector on their thinking that there was an electrical problem in the suite. He claims that at no time did the tenants notify him of an electrical problem and therefore was not given an opportunity to remedy any such problem, which he claims the electrical inspection confirmed there was not. Neither party said they could relate to an inspection result which confirmed there was no electrical problem. The landlord is claiming \$140 for what he refers to as a, "needless" inspection, for which he was invoiced, and claims to have paid. The landlord did not provide a receipt. However, the tenant acknowledges calling the electrical inspector in earnest before giving the landlord opportunity to remedy any problem and that an inspector did arrive.

The landlord's claim of \$100 for the filing fee is based on the landlord's application claim amount exceeding \$5000. He acknowledged the claim amount of \$7290 was on speculation he would need to pay \$2000, "if a bailiff is needed for removal", and \$500 for cleanup costs, which did not materialize, and for rent for the month of February 2009 in the amount of \$1100.

Analysis

From the testimony of both parties, the tenant agrees the landlord is owed rent and utilities for the month of January 2009. I prefer the tenant's account that the 'hydro' portion of the utilities should be reduced to compensate for another tenant's excessive use of electrical power for heating, in the amount of \$239.52

The landlord is not able to provide evidence that he incurred any cost for disposing of garbage left by the tenants. I prefer the tenant's testimony that on moving out, they left behind 5 bags of garbage, and I grant the landlord \$2 for each bag.

On reflection of the testimony of both parties I find the tenant is partially responsible for water damage to the countertop. In factoring the age, makeup and condition at the outset of the tenancy, I grant the landlord the amount of 25% of his claim.

As to the landlord's claim for the cost of the electrical inspection, I am guided by Section 33 of the Residential Tenancy Act (RTA) which states as follows:

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and

telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c) the amounts represent more than a reasonable cost for the repairs;
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

From the testimony of both parties, and their agreed facts, I find the tenant did not alert the landlord to the prospect of an electrical problem or allow the landlord to remedy the

problem before ordering an inspection. Therefore, I find the landlord is entitled to reimbursement for the cost of the inspection by the electrical inspector.

From the landlord's date of application for dispute resolution, it is apparent that the landlord's monetary claim at application was, at best, premature and highly speculative, given the tenants had until January 12, 2009 to vacate. Had the landlord waited until after the effective date on the notice to end tenancy, the landlord's claim would, in all likelihood have been considerably below \$5000. I grant the landlord the amount he would have paid if the claim had been less speculative.

Therefore, as to a monetary order, I find the landlord is entitled as following:

Rent for January 2009	\$1100.00
Utility arrears to date – GAS	\$ 181.25
Utility arrears to date – Hydro / Electrical	\$ 239.52
Replacement of kitchen counter top	\$ 187.50
Cleanup costs subsequent to tenant's move – 40 garbage bags	\$ 10.00
Re-imbursement for call out of electrical inspector by the tenants, billed to the landlord	\$ 140.00
Recovery of Filing Fee – one half (1/2)	\$ 50.00
Total entitlement claim	\$1908.27

Conclusion

I grant to the landlord an order under section 67 for **\$1908.27**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated February 11, 2009