



# Dispute Resolution Services

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

## **Decision**

**Dispute Codes:** CNR, MNR, MNDC, PSF, LRE, RR

## **Introduction**

This hearing dealt with the tenant's application for an order cancelling a notice to end tenancy for unpaid rent or utilities, a monetary order for the cost of emergency repairs and as compensation for loss, an order requiring the landlord to provide services or facilities required by law, an order suspending or setting conditions on the landlord's right to enter the rental unit, and an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided. The tenant's agent and the landlord participated in the hearing and gave affirmed testimony.

## **Issues to be Decided**

- Whether the tenant is entitled to cancellation of the notice to end tenancy for unpaid rent or utilities
- Whether the landlord is entitled to an order of possession
- Whether the tenant is entitled to various other orders, as above, under the *Act*

## **Background and Evidence**

This hearing was reconvened following the adjournment from an earlier hearing held on January 12, 2008. Subsequent to the previous hearing both parties made further written submissions.

There is no written residential tenancy agreement in evidence. Further, the parties disagree as to whether a tenancy was entered into by way of a verbal agreement. In his oral testimony and in a written submission the landlord disputes that there was ever a

verbal tenancy agreement, however, he also makes reference to payments required for rent, and cites rent as \$650.00 per month.

By sworn Affidavit dated August 1, 2008, the tenant and a former co-tenant submit that tenancy commenced on or around May 20, 2008 with rent payable in the amount of \$450.00 on the 15<sup>th</sup> of each month. As to utilities, in the Affidavit the tenant's share is identified as "half."

During a previous hearing, the parties took opposing views on whether a particular payment of \$450.00 constituted rent or security deposit.

After the electricity and water supply to the unit were cut off, by letter to the landlord dated November 9, 2008, the tenant informed the landlord of related costs incurred in the total amount of \$875.00. By way of the letter, as above, the tenant also sought full reimbursement from the landlord. As reimbursement was not forthcoming, the tenant withheld payment of rent due on November 15, 2008 in the amount of \$450.00.

The landlord issued a 10 day notice to end tenancy for unpaid rent dated December 8, 2008, a copy of which was submitted into evidence. In the landlord's notice he identified the monthly rent due on November 15, 2008 as being \$650.00. In a manual notation on the notice he further documented that the tenant's payment of utilities was overdue by "\$300 00 + \$394.00." Finally, in the notice the landlord instructed that the tenant's payment of \$5,044.00 within 5 days after having received the notice would lead to automatic cancellation of the notice.

Subsequently, the tenant withheld an additional \$425.00 from the rent due on December 15, 2008. This amount withheld in combination with the amount of \$450.00 withheld from November's rent, was the tenant's means for being compensated for costs claimed of \$875.00, as above.

The landlord acknowledges that he is responsible for terminating the electrical and water supply to the unit. Further, the landlord objects that the tenant undertook to have these utilities restored by someone he alleges was likely unqualified and who would

necessarily have accessed his private property during his absence in order to complete the reconnections. The landlord also challenges the amount of specific costs claimed by the tenant.

In addition to costs associated with reconnection of the electrical and water supply and loss of food, the tenant claims compensation for rental of a generator, gasoline to power the generator and loss of the right to quiet enjoyment. A summary of costs claimed by the tenant as a result of the landlord's actions, in combination with my respective findings, is set out below in the Analysis.

### **Analysis**

In order to decide the issues, I have carefully weighed the oral testimony and documentary evidence presented by the parties. A test for assessing credibility is set out in *Faryna v. Chorny* [1952] 2 D.L.R. 354 (BCCA). In part, the test reads as follows:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject the story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of probabilities which a practical and informed person would readily recognize in that place and those circumstances.....(pp. 356-357)

Based on the documentary evidence and testimony of the parties, I find that a verbal residential tenancy agreement was entered into by the parties in May 2008. I also find that the monthly rent is \$450.00 and that it is due and payable on the 15<sup>th</sup> of each month. Further, while I find that the parties agreed that the tenant would pay a half share of the cost of monthly utilities, in the absence of sufficient evidence from either party on the matter, I make no finding as to whether any payment of utilities is presently outstanding.

Additionally, in the absence of sufficient evidence, I make no finding with regard to any agreement or exchange of funds between the parties with respect to a security deposit.

I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent or utilities dated December 8, 2008. While the tenant did not pay the outstanding rent and/or utilities within 5 days of receiving the notice, she disputed the notice by submitting an application for dispute resolution within 5 days after having received it.

There appears to be some animosity between the parties, and in spite of their efforts, through conversation during the hearing the landlord and the tenant's agent were unable to reach a settlement of the dispute.

The landlord claims that he wants to have the property for his own use and would like to build a shop attached to the unit. In this regard the landlord was referred to familiarize himself with the specific provisions set out in section 49 of the *Act* which address

**Landlord's notice: landlord's use of property.**

Section 27 of the *Act* speaks to termination or restriction of services or facilities and provides, in part, as follows:

27(1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation,

Section 33 of the *Act* addresses "**emergency repairs**" and defines these, in part, as including repairs that are made with respect to "damaged or blocked water or sewer pipes or plumbing features" and "the electrical systems."

This section of the *Act* also requires that 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." There is no evidence that the landlord provided this information to the tenant and, indeed, the

landlord acknowledges taking action to terminate the provision of electrical power and water as a means of bringing the tenancy to an end.

Further, section 33(3) of the *Act* states:

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 repairs.

I find that the restoration of electricity and water to the unit was necessary and that it constituted “emergency repairs.” I also find that as the landlord intentionally terminated the services and was unwilling to restore them, the tenant had no reasonable alternative but to make arrangements to have the services restored.

Section 28 of the *Act* speaks to **Protection of tenant’s right to quiet enjoyment**.

Further, Residential Tenancy Policy Guideline # 6 addresses the Right to Quiet Enjoyment and states, in part:

This guideline deals with a tenant’s entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. At common law, the covenant of quiet enjoyment “promis(es) that the tenant...shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant’s right to freedom from serious interferences with his or her tenancy.”

Examples of interference which may form the basis for a claim of a breach of the covenant of quiet enjoyment include, but are not limited to:

- persecution and intimidation
- intentionally removing or restricting services, or failing to pay bills so that services are cut off

For the reference of the parties I draw attention to the provisions set out in section 29 of the *Act* which address **Landlord's right to enter rental unit restricted**. In part, this section of the *Act* states as follows:

29(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

Following is a summary of my findings arising from consideration of the tenant's claim for compensation:

\*\$375.00 - restoration of electrical supply

\*\$350.00 - restoration of water supply

\*\$ 75.00 - loss of food for 4 days without power (in the absence of a detailed breakdown of food lost, and as I am satisfied that the tenant found a means to re-

establish the power supply, I have dismissed 50% of the tenant's initial claim and, in its entirety I have dismissed the subsequent claim for an increase in the amount of this claim)

*(\*As set out by letter to the landlord from the tenant dated November 9, 2008)*

\$1,008.00 - rental of generator over 10 weeks (while I accept that a cost has been incurred, in the absence of any invoices or receipts to support the quantum of this cost, I allow 50% of the claim)

\$200.00 - gas to run the generator (while I accept that a cost has been incurred, in the absence of any invoices or receipts to support the quantum of this cost, I allow 50% of the claim)

\$103.85 - one week's rent as compensation for loss of the right to quiet enjoyment  $[(\$450.00 \times 12) \div 52]$

Total amount of claim found in favour of the tenant: \$2,111.85

Following is a summary of my findings arising from consideration of the landlord's claim for compensation:

\$450.00 Unpaid rent due on November 15, 2008

\$425.00 Balance of unpaid rent due on December 15, 2008

\$450.00 Unpaid rent due on January 15, 2009

\$450.00 Unpaid rent due on February 15, 2009

Total: \$1,775.00

I find that the tenant's withholding of rent arose out of costs associated with "emergency services," and that the landlord provided no recourse for the tenant except to initiate action and incur costs to have these services restored.

I also find that rent shown by the landlord as overdue on the notice is in excess of the amount owed. I further find that there is insufficient evidence submitted by either party in regard to any particular amount that may be outstanding for utilities. In the result, I hereby set aside the landlord's notice to end tenancy for unpaid rent and/or utilities. The tenancy therefore continues in full force and effect.

Based on the limited documentary evidence submitted, as above, I find that the tenant has established a claim in the total amount of \$2,111.85, and that the landlord has established a claim in the total amount of \$1,775.00. I order that the respective claims be offset against each other and, in the result, I find that there is a difference in favour of the tenant in the amount of \$336.85. I order that the tenant may withhold this amount from the next regular payment of monthly rent due on March 15, 2009. The balance of rent payable on March 15, 2009 is therefore \$113.15 (\$450.00 – \$336.85).

### **Conclusion**

I hereby set aside the landlord's notice to end tenancy for unpaid rent and/or utilities. The tenancy continues in full force and effect.

I order the landlord to comply FORTHWITH with the provisions respecting the provision of services and facilities to the unit (electrical and water supply) as set out in section 27 of the *Act*.

I order the landlord to comply FORTHWITH with the provisions set out in section 29 of the *Act* concerning the landlord's right to enter the rental unit.

Pursuant to the offsetting of claims, as above, I order that the tenant may withhold \$336.85 from rent due and payable on March 15, 2009, leaving a balance of rent due on that date of **\$113.15**.

DATE: February 18, 2009

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Dispute Resolution Officer