



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **Decision**

### **Dispute Codes:**

RP

MT

CNR

MNDC

FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel two Ten-Day Notices to End Tenancy for Unpaid Rent dated February 3, 2009 and February 10, 2009. The tenant's application also requested: a monetary order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement.

Both the landlord and the tenant appeared and each gave affirmed testimony in turn

### **Preliminary Issue**

The tenant requested more time to make an application to cancel the Notice to End Tenancy. However, as the tenant did apply within the required time limit, I found that consideration of this request was unnecessary.

Also at the outset of the hearing the tenant advised that her claim included damages claimed on behalf of another resident who lives in the same building, but in a different unit. I found that this individual was not a party to this proceeding and as such, would need to submit a separate application seeking the damages on this resident's own behalf.

### **Issue(s) to be Decided**

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord's issuance of the Ten-Day Notice to End Tenancy for Unpaid was warranted. The questions to be answered include:
  - Did the tenant violate the Act by failing to pay rent when rent was due?
  - Did the tenant pay the rent in full within 5 days of receiving the Notice to End Tenancy?
- Whether the tenant is entitled to monetary compensation under section 67 of the Act for damages or loss or possibly a rent abatement. This determination is dependant upon answers to the following questions:
  - Has the claimant presented proof:
    - Of the existence and monetary value of the damage or loss
    - That the cause of the damage or loss was the respondent's actions in violation of the Act or the tenancy agreement
- Whether the landlord has failed to meet its obligations under the Act to repair and maintain the unit and should therefore be ordered to do so.

The burden of proof is on the landlord/respondent to justify the reason for the Ten-Day Notice. The burden of proof is on the applicant to prove the remainder of the claims and requests contained in the tenant's application..

### **Background and Evidence – Request to Cancel Ten-Day Notice**

Submitted into evidence by the applicant/tenant in support the application was, a copy of the Ten-Day Notice to End Tenancy dated February 10, 2009 and effective February 20, 2009. Also submitted into evidence were copies of communications between the

parties and photographs showing snow accumulated on the premises and the tenant shoveling the snow and photographs of the toilet.

The landlord testified that the tenant failed to pay utilities as required under the tenancy agreement. The landlord testified that a gas bill for \$92.00 was given to the tenant in mid-December, but that the tenant did not pay the bill. This invoice was not in evidence. The landlord testified that the tenant was also given a bill for the gas and hydro in mid-January totaling \$354.00 which also included the December arrears. This invoice was also not submitted into evidence. The landlord testified that the tenant did not pay this bill and that a Ten-Day Notice to End Tenancy was issued on February 3, 2009. The landlord testified that additional bills have since come in for February that need to be paid as well.

The tenant testified that the landlord did not present the gas bill in December, but that the tenant did receive notification of the second bill totaling \$352.00 for gas and hydro owed on January 29, 2009. The tenant testified that the landlord did not wait 30 days before issuing the Ten-Day Notice to End Tenancy for Unpaid Utilities but issue a Notices on February 3, 2009 and February 10, 2009. The tenant acknowledged that the tenancy agreement does contain a specific provision that the tenant would be responsible for 50% of utilities and stated that she has been paying her share of the gas, hydro, garbage/water during the tenancy. However the tenant pointed out that the agreement also shows that utilities *are* included in rent in a different part of the agreement, which the tenant finds to be misleading. No copy of the tenancy agreement was submitted into evidence. The tenant testified that she had decided to withhold payment of the utilities because of the landlord's failure to adequately address some repair issues including a toilet that continually runs water, thereby adversely impacting the tenant's utility costs.

### **Analysis – Notice to End Tenancy**

A landlord can issue a Notice to End Tenancy for Unpaid Rent or Utilities under section 46 of the Act when rent or utilities are in arrears. However this applies only if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant receives a written demand for payment of them. After the thirty days a landlord would then be permitted to treat unpaid utility charges as unpaid rent and give notice on this basis. In this instance, I find that both parties have acknowledged that the tenant is responsible to pay a portion of the utilities under the tenancy agreement, despite the confusion of the conflicting terms. However, I find that the landlord failed to provide proof to verify that a written demand for utilities was given to the tenant prior to January 29, 2009. Therefore, I find that both Ten-Day Notices were issued prematurely and must be cancelled.

That being said, I find that at the present time the tenant is now in a position where she has been given a demand for utilities owed more than thirty-days ago and I encourage the tenant to pay the debt as non-payment would entitle the landlord to issue a Ten-Day Notice to End Tenancy. I must point out that, under the Act, a tenant is not entitled to withhold payment of rent or utilities based on a landlord's violation of the Act. The tenant is expected to pursue the landlord's violation through the dispute resolution process instead of taking matters in their own hands in this manner.

### **Background and Evidence – Monetary Claim**

The tenant testified that in December after a heavy snowfall the landlord was contacted by the tenant with a request to remove the snow and the landlord refused to do this or to make arrangements for this to be done without delay. The tenant testified that after repeatedly trying to get the landlord to fulfill its obligations to maintain the property by removing snow from certain areas, the tenant found it necessary to purchase a snow shovel and do the work herself along with another occupant of the building. The tenant had submitted photos showing the tenant shoveling the snow and showing that the

cement steps were in a hazardous condition due to snow. The tenant is seeking compensation for the purchase and for doing the work.

In regards to the snow issue, the landlord acknowledged that the site was snow-bound for a time, like most homes in the area and pointed out that the landlord's access a mobility was also affected. The landlord testified that clearing of snow on the grounds was not the responsibility of the landlord under the tenancy agreement. The landlord testified that the landlord had made an informal arrangement with another tenant to take care of the snow issue but he evidently lacked a shovel. The landlord stated that she did her best, but was not able to make sure that the snow removal was done.

### **Analysis - Monetary Compensation**

The tenant was requesting monetary compensation for the snow removal and shovel. In regards to an Applicant's right to claim damages from the another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant has a burden of proof to establish that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7 and the evidence furnished by the applicant must satisfy each component of the test below:

#### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the tenant and the tenant has established that the rental unit was subject to access problems due to snow.

I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

In this instance, regardless of whether or not the snow removal was included in the tenancy agreement, I find that under the Act it is incumbent on the landlord to ensure that tenants have access to the facilities and that there is no risk to safety. I find that whether the landlord does the job herself or chooses to make arrangements with a third-party to do take care of the snow build-up and salting or sanding of the steps, it was not this tenant's responsibility to take on the task. Naturally delays in addressing snowfall can occur, but in this case, the landlord refused outright and the tenant was forced to buy a shovel and take the time to clear the area, which is not acceptable.

I find that the tenant has met all elements in the test for damages and is entitled to compensation of \$129.96 which includes \$29.96 for the purchase of a shovel and \$100.00 abatement from the rent for having to fill in for the landlord in regards to snow removal.

### **Background and Evidence - Repairs**

The tenant testified that the unit has been plagued by a persistent problem with the toilet intermittently running water, with the tank refilling and repeatedly emptying. The tenant testified that, while the landlord immediately attended, examined the fixture and made some adjustments on three occasions, the landlord's intervention did not resolve the problem. The tenant testified that, given the fact that the landlord had already tried and failed to fix the problem, it was appropriate to call in a plumber. The tenant engaged a plumber who provided an opinion and estimate by telephone for replacing a valve or the entire fixture at an approximate cost of \$200.00 . However, the landlord refused to take this next step. As a result, since December the problem has continued and the tenant is now seeking an order to compel the landlord to properly do the repair or have the toilet replaced by a qualified professional.

In regards to the toilet issue, the landlord testified that the tenant had reported that the toilet was overflowing and it was found not to be. The landlord testified that the problem with the toilet was unclear. When asked whether the matter could be "wear and tear" of the parts being worn out, the landlord testified that the previous owner had indicated that the fixture was approximately five years old. The landlord acknowledged that the services of a qualified plumber were not used to assess the problem.

The tenant also had concerns about what appears to be an electrical irregularity affecting a light fixture in her bedroom. The wall switch operates the light fixture but after the light is turned on, one of the lights sometimes kicks out without warning. The tenant's concern is a safety one and the tenant stated that she did not accept the landlord's position that nothing was wrong with the electrical connection or the fixture. The tenant wants the problem looked into and rectified.

The landlord testified that the light fixture in the tenant's bedroom was not a danger and that an examination showed no wiring to the fixture. The landlord speculated that the fixture was batter-powered. The landlord also stated that the tenant was aware that the light did not work properly when she rented the unit, a claim which the tenant disputed.

### **Analysis - Repairs**

As mentioned above, section 32 places a responsibility on the landlord to maintain and repair a unit. Electrical and plumbing problems fall squarely in the landlord's realm to take care of. I find that, although the landlord has reacted promptly to complaints about the toilet and the lighting, the landlord's efforts have not been successful in resolving the issues over several months and the tenant has had to endure the deficiencies and repeatedly contact the landlord, even taking it upon herself to obtain an informal opinion from a plumber. I find that the landlord is not fulfilling its responsibility under the Act by merely "looking into" the problems as they are reported again and again. I find that the landlord needs resolve the lighting problem and the toilet deficiency completely. It appears that professional intervention is warranted.

Given the above, I hereby order the landlord to enlist the help of a qualified electrician and certified plumber as necessary to repair or replace the questionable fixture and wiring and the malfunctioning toilet. Unless and until the lighting and the toilet problems are completely rectified I find that the rental rate for the unit should be reduced by \$60.00 per month from \$1,450.00 to \$1,390.00. I order that the monthly rent as of March 1, 2009 will be set at \$1,390.00 per month and that the tenant shall pay this amount until the repairs are successfully completed and that the rental rate will revert back to \$1,450.00 commencing the first day of the month following the completed repairs.

### **Conclusion**

Based on the testimony and evidence discussed above, I hereby order that the Ten-Day Notices to End Tenancy dated February 3, 2009 and February 10, 2009 are permanently cancelled and of no force nor effect.

I order that the landlord repair or replace the bedroom light fixture, investigate the wiring of the light fixture and its wall switch and replace or repair the toilet, enlisting as necessary, a qualified professional electrician and plumber.



I order that the rental rate for the unit be reduced as of March 1, 2009 from \$1,450.00 to \$1,390.00 and that this rate continue until the specified repairs are finally completed, at which time the rental rate will revert back to \$1,450.00 as of the first day of the month following the repair completion.

I order that the tenant is entitled to deduct a further amount of \$179.96 as a one-time abatement from the next rental payment representing \$29.96 for the shovel purchased, \$100.00 for the tenant's labour and \$50.00 for the cost of this application.

The tenant must serve the above orders on the landlord.

March 2009

Date of Decision

---

Dispute Resolution Officer