

## **DECISION**

Dispute Codes      CNR OLC MNR MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a notice to end tenancy for unpaid rent, to order the landlord to comply with the *Act*, to obtain a Monetary Order for cost of emergency repairs, money owed for compensation for damage or loss under the act, and to recover the cost of the filing fee from the landlord for this application.

The landlord and tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

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

- Whether the tenant is entitled to an Order under section 46 of the *Act* to cancel a notice to end tenancy for unpaid rent and to Order the landlord to comply with the *Act* pursuant to section 62 of the *Act*.
- Whether the tenant is entitled to a Monetary Order under section 67 of the *Act* for the cost of emergency repairs and money owed or compensation for damage or loss under the *Act*.
- Whether the tenant is entitled to recover the cost of the filing fee pursuant to section 72 of the *Act*.

### Background and Evidence

The tenancy is a month to month tenancy which began on September 1, 2007 with rent of \$800.00 due on the first of each month. There was a rental increase on May 1, 2009 which increased the rent from \$775.00 per month to \$800.00 which both parties

acknowledged and both parties agreed to the rent increase. The tenant paid a security deposit of \$370.00 and a pet deposit of \$200.00 during the last week of August 2007.

The tenant testified that the notice of dispute resolution was served to the landlord in person and the evidence was later sent via registered mail. The tenant provided Canada Post tracking numbers in her verbal testimony which supports her statement that the evidence package was sent via registered mail on May 15, 2009.

The tenant advised that she received three pages for notices to end her tenancy, the first page of the 10 Day Notice to End Tenancy and the two pages for the 1 Month Notice to End Tenancy for Cause.

The landlord testified that she served the tenant with page one of the 10 Day Notice to End Tenancy and the two pages for the 1 Month Notice to End Tenancy for Cause on April 7, 2009 in person at the rental unit in the presence of the tenant's son.

The tenant has applied to dispute the 10 Day Notice to End Tenancy for unpaid rent.

The tenant has applied for a monetary claim for rent abatement as the tenant claims she was not able to use her bedroom from December 13, 2008 until mid February 2009, because of a water pipe leak. The tenant testified that she turned the heat off in her room when she went out of town in the winter and that when she returned the pipes were frozen. The tenant testified that she wasn't happy with how the water was cleaned up from the carpet as the carpet was still wet so the tenant decided to remove the carpet. The tenant stated that her bedroom was too cold to stay in after the plumber removed the drywall and left a huge hole to the outside. The tenant is claiming \$800.00 rent abatement for the loss of use of her bedroom for approximately 8 weeks.

The landlord testified that there was not a huge hole left in the wall to the outside that in fact there was insulation in the walls and the siding so there couldn't be a huge hole.

The landlord made reference to the late evidence supplied by the tenant which shows that there was not a hole to the outside of the building from the tenant's bedroom.

The tenant stated that she had some items stored outside under a tarp during the time the repairs were being done to her bedroom and that the plumber removed the tarp from her items, causing damage to her possessions including a lawn mower. The tenant is claiming \$200.00 for damage to property and to the lawnmower.

The tenant is claiming approximately \$500.00 for moving expenses. The tenant stated that she has not vacated the rental unit but that she is requesting this money in anticipation of her moving costs.

The tenant is requesting an Order to have the landlord comply with the *Act* in relation to smoke detectors in the rental unit. The tenant claims that the smoke detectors were never installed in the rental unit.

The tenant would also like the landlord to be ordered to reseal two windows, pay to have a mould inspection conducted on the rental unit as her son is sick all of the time and she suspects there may be mould in the rental unit.

The landlord testified that she could not say for certain if the smoke detectors were currently installed in the rental unit. The landlord stated that she knows the smoke detectors were there at one time but that she cannot say for certain that they are still there.

The landlord advised that the tenant has not previously advised her of issues with broken seals on windows or any problems with mould in the rental unit.

The landlord testified that the tenant is verbally abusive to her and all of the contractors hired to do work in the rental unit. The landlord stated that she provided evidence of how the tenant has used profanity towards other residents and how she has written with

lipstick on a neighbours vehicle, which has sparked the issuance of the 1 Month Notice to End Tenancy.

The landlord submitted other documents into evidence in support of a claim against the tenant that the tenant has not properly cared for the rental unit.

### Analysis

I find Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*.

The tenant's evidence was received late by both the landlord and the Residential Tenancy Branch and will not be used for this hearing

Section 46 of the *Act* stipulates that any notice issued for unpaid rent, must comply with section 52 of the *Act*, when given by a landlord, and be in the approved form. The landlord has admitted to serving the tenant with page 1 of the 10 Day Notice to End Tenancy and did not include page 2 of the notice. I find that service of the 10 Day Notice to End Tenancy was not done in accordance with the *Act*, and I hereby deem the 10 Day Notice to End Tenancy to be cancelled and is of no effect.

The 1 Month Notice to End Tenancy was served to the tenant by the landlord at the same time as the 10 Day Notice to End Tenancy. The tenant has not applied to dispute the 1 Month Notice to End Tenancy within 10 days after the date the tenant received the notice, pursuant to section 47 of the *Act* which grants the landlord liberty to apply for dispute resolution, submit their evidence, and to request an Order of Possession.

The tenant has submitted a monetary claim for loss under the *Act*. I find that in order to justify payment of damages or loss under section 67 of the *Act*, the Applicant tenant would be required to prove 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. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the

damage or loss, in this case the tenant, bears the burden of proof and the evidence furnished by the Applicant tenant 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 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

The tenant has claimed \$800.00 for loss of use of her bedroom as she says it was too cold to stay in the bedroom and there was no carpet in the room. I find that the lack of carpet on a floor does not prevent a person from using a bedroom and if the room was cold the tenant could have turned on the heating system or used the electric heater she testified she used in the past to heat the bedroom. I find that the tenant has failed to prove the test for damage or loss as listed above, and dismiss her claim without leave to reapply.

The tenant has submitted a claim of \$200.00 for the loss of personal articles and damage to a lawn mower that she claims was stored outside of the rental unit under a tarp. There was no evidence provided to support the tenant's claim for this loss and I find that the tenant has failed to prove the test for damages as listed above. Based on the aforementioned I hereby dismiss the tenant's claim without leave to reapply.

The tenant is requesting a monetary claim of \$500.00 for future moving costs. As the tenant has not moved, has not incurred moving expenses, and has not supplied evidence to the actual cost of the move. I find that the tenant has failed to prove the test for damage or loss. I hereby dismiss the tenant's application without leave to reapply.

The tenant has requested an Order for the landlord to incur costs to have a mould inspection done and to have two windows re-sealed. The tenant has not provided evidence to support her claims that there are windows with broken seals or that there is mould present in the rental unit. Based on the above I hereby dismiss the tenant's request without leave to reapply.

The tenant testified that there are no smoke detectors in the rental unit and the landlord could not speak definitively as to the presence of smoke detectors. As smoke detectors are a critical safety item, I hereby Order the landlord to inspect the rental unit, within two days of receiving this decision, to determine if there are smoke detectors installed in the rental unit and to ensure the smoke detectors are operational.

As the tenant has not been successful with her application, I hereby dismiss her claim to recover the filing fee for her application, without leave to reapply.

In regards to the landlord's claims and evidence relating to the 1 Month Notice to End Tenancy for cause, I am not able to hear nor consider the landlord's claim during these proceedings as this hearing was convened solely to deal with the tenant's application. That being said, I must point out that the landlord is at liberty to make their claims in a separate application and to resubmit their evidence if the landlord wants to pursue requesting to end the tenancy for cause and obtain an Order of Possession under Section 55 of the *Act*.

### Conclusion

**I Hereby Order** that the 10 Day Notice to End Tenancy, issued on April 6, 2009, is cancelled, and is of no force or effect.

**I Hereby Order** the landlord to inspect the rental unit to verify the presence of smoke detectors, to ensure that all smoke detectors present are operational, and that the smoke detectors meet the Provincial Fire Regulations.

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: May 25, 2009.

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Dispute Resolution Officer