



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNL, MNDC, FF

### Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy for the landlord's use of the rental property, for a monetary order for money owed or compensation for loss or damage under the Act, and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with s. 89 of the Act. They were sent to the landlord by registered mail on or about May 24, 2009. The landlord confirmed that they had received these. I find that the landlord was properly served pursuant to s. 89 of the Act with notice of this hearing.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions. Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Has the tenant provided sufficient evidence that the Notice to End Tenancy can be cancelled?
- Has the landlord established that there is sufficient cause to end the tenancy?
- How extensive are the repairs and renovations that required vacant possession?

- Are the tenants entitled to a Monetary Order for compensation under the Act?
- Are the tenants entitled to recover their filing fee from the landlords?

## Background and Evidence

This tenancy started on January 01, 2001, rent is \$860.00 per month payable on the 1<sup>st</sup> of each month. This is the forth hearing that has been held to resolve disputes between the landlords and tenants. The other three hearings dealt with two Notices to end tenancy for cause which were both set aside and an improperly served notice for a rent increase which has been reversed. This hearing deals with a forth Notice issued to the tenants by the landlord on May 09, 2009. This is a two Month Notice to End Tenancy for the landlord's use of the property. The tenants have disputed this notice in the required time frame. They dispute the fact that the landlord needs to end the tenancy to carry out the proposed renovations. The tenants have agreed to move their possessions to the lower level of the house to give the landlord room to carry out the renovations of the upstairs area as stated in their evidence. The tenants have also agreed to move out of the property and take some vacation time while the renovations take place.

The landlords request vacant possession as they do not want to be responsible for the tenant's belongings in the property and feel that as the relationship has broken down between both parties that they would be leaving themselves open to claims by the tenants for compensation if any of their belongings were damaged or missing. The landlords claim that they also need the downstairs area to store tools, equipment and supplies. The landlords request the Notice is upheld to allow them to complete the renovations with vacant possession.

Residential Tenancy Branch  
Ministry of Housing and Social Development

The tenants have made many improvements to the property in the nine years of their tenancy. They have carried out renovations on the downstairs area and in the yard to the cost of approximately \$3,000.00. This work has been paid for by the tenants and they feel this is a home they would like to remain in as they have invested many hours and money in making it a home.

The tenants claim includes compensation for the anxiety, stress and loss of quiet enjoyment of their home because of the frequent Notices issued by the landlords and the work they have undertaken to provide evidence to support their claim. The tenants have both been prescribed medication for anxiety attacks and to help them sleep.

The tenants feel the landlord is relaying on their evidence from a previous hearing where they detailed repair work that needed to be completed. The tenant's state that the landlord carried out a 15 minute inspection to determine the level of renovations that they have stated needs to be done to ensure the rental property maintains its value. The renovations include decorating the upper level of the house, Sanding, repairing and varnishing of the wooden floors, laying ceramic tiles, replacing the kitchen sink, refitting a bath enclosure, replacing or reworking kitchen cupboards to accommodate a new sink.

## Analysis

The landlords are within their rights to end a tenancy if they are going to undertake extensive renovations that require vacant possession. However the guidelines for landlords and tenants s. 12.10 state that when ever possible renovations should be done without evicting the tenants. For example, if renovations require the rental property to be vacant for a short period, the tenant could relocate and later return to the property. I find that as the tenants have been long term tenants with a good record of keeping the

Residential Tenancy Branch  
Ministry of Housing and Social Development

property to a high standard, carrying out improvements to the property at their own expense and paying their rent each month it would be unreasonable for the landlords to evict them at this time. I also find that only a small portion of the renovations would require vacant possession.

I find that the relationship has irrevocably broken down between the landlords and the tenants to the point that any useful communication between them has become difficult. I also find that due to the numerous notices issued by the landlords to the tenants that the landlords have a strong desire to end the tenancy. However, as stated above the tenants have put forward a strong argument to stay in the property and resolving the need for vacant possession while the renovations take place. I do not doubt that the renovations are required but find that these do not warrant the end of a tenancy.

The tenants have agreed to move out while the major part of the work takes place, namely the sanding and varnishing of the wooden floors and the replacement of the floors in the kitchen and bathroom with tiles. I would suggest that this work is carried out first and completed in a timely manner. The decorating and refitting of a sink and any kitchen cupboards does not require the tenants to vacate the property as this would be part of a landlord's normal duty to maintain a residential property in a reasonable state of decoration and repair subject to section 32 of the Act.

I find that the tenants have acted reasonable in agreeing to remove and store their belongings in the downstairs area to provide the landlords with a clear area to carry out the required work. However, due to the element of distrust that has built up between the parties the landlords are not comfortable with having the tenant's belongings in the property while the work takes place and state that they need this area for storage. Due to this I agree to overturn the landlords Two Month Notice and the tenancy can continue with conditions:

- 1) That the tenants remove their personal belongings to two rooms in the downstairs area. In the event these spaces will not accommodate their belongings then the tenants must use storage space elsewhere at their own expense. The tenants are at liberty to fit locks to these rooms which must be removed and made good at the end of the tenancy.
- 2) The tenants must vacate the property to allow the landlords to carry out the first stage of the renovations for repairing, sanding and varnishing the wooden floors, replacing the bathroom and kitchen floors with tiles.
- 3) The landlords must complete the above mentioned renovations in a timely manner not more than 4 weeks from the date they commence. The landlords and tenants must agree on a date that is convenient to both parties for the commencement of the work. The remaining renovations must be completed as specified by the landlord and proper notice to enter the property must be given to the tenants.
- 4) The tenants are exempt from paying rent to the landlord for the weeks they are away from the property.

I find that the tenants claim for compensation against the landlords for harassment, stress and loss of quiet enjoyment has little grounds to uphold the claim. Due to the continuing disputes between both parties I find that an equal amount of stress has been inflicted on both sides. Both parties must share some blame as to the breakdown in the relationship. I would strongly recommend that the tenants and landlords come to some sort of agreeable arrangement for the continuing occupancy of the rental property to ensure further disputes are resolved at an early stage. I enclose some useful information about resolving disputes between the parties.



# Dispute Resolution Services

Page: 6

Residential Tenancy Branch  
Ministry of Housing and Social Development

As the tenants are willing to accommodate the landlords request for the property to be vacant in order for the renovation work to be carried out I find no reason for the tenancy to end. However, I do find in favour of the tenants receiving some form of compensation for this adjustment to their family life and the inconvenience caused by relocating for four weeks. Therefore, I find the tenants are entitled to some compensation and Order them to withhold half of their rent from the next three months rent payments to the sum of \$1,290.00.

## Conclusion

The landlords two month notice is cancelled and the tenancy may continue with the conditions set out above.

The tenants are entitled to withhold half of their rent over the next three months rent payments to the sum of **\$1,290.00**. As the tenants have been successful in this matter they are also entitled to recover their filing fee for this hearing of **\$50.00** which they may also withhold from the next months rent payment.

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: June 30, 2009.

---

Dispute Resolution Officer