

# Dispute Resolution Services

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

## Decision

Dispute Codes: CNC, MNDC, OLC, RP, LRE, AAT, LAT, RR, FF

## Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy, a monetary order, an order that the landlord comply with the Act, an order that the landlord make repairs to the rental unit, an order suspending or setting conditions on the landlord's right to enter, an order allowing access to the unit for the tenant, an order authorizing the tenants to change the locks to the rental unit and an order allowing the tenants to reduce rent for facilities not provided. Both parties participated in the conference call hearing.

I note that a considerable amount of time was spent at the hearing in without prejudice settlement discussions. Ultimately the landlord declined to settle the matter. Although the tenants had agreed to withdraw a number of their claims in the event a settlement was reached, because the parties could not reach an agreement, I consider none of the tenants' claims to have been withdrawn and have adjudicated upon all of the claims in this decision.

## Issue(s) to be Decided

Are the tenants entitled to the orders sought?

## Background and Evidence

The tenancy has been approximately four years in duration. The rental unit is located in the basement of a home in which the landlord resides on the upper floor. The parties agreed that on or about April 26 the tenants were served with a one-month notice to end tenancy for cause (the "Notice"). The Notice alleges that the tenants have been repeatedly late paying rent and that the tenants have not done required repairs. The landlord alleged that the tenants have always been late paying rent, but did not provide any documentary evidence such as receipts to prove the late payments. The tenants

denied having paid rent late. The landlord testified that the tenants lived in the rental unit rent free for approximately 7 months at which time they were to perform renovations. The landlord alleged that the tenants put in a bedroom, but did not perform other renovations. There is no written agreement indicating what renovations the tenants were to perform. The tenants testified that they have done extensive renovations.

The tenants objected to the landlord entering the rental unit repeatedly throughout each month, testifying that the landlord entered the rental unit three times in the month of May. The landlord testified that she or her husband only enter the rental unit when repairs are required or when they need to inspect the rental unit. The tenants seek an order restricting the landlord's access and permitting them to change the locks to the rental unit.

The parties agreed that throughout the tenancy the tenants have been permitted to use on site laundry facilities, although the landlord insisted that use of the facilities was never part of the rental agreement. Several months ago, the landlord advised the tenants that they could no longer use the laundry facilities. The tenants seek a \$50.00 per month reduction in rent to compensate them for the withdrawal of the laundry facilities. The tenants testified that they have been spending \$75.00 - \$80.00 per month to take their laundry to a laundromat.

The tenants testified that from the beginning of the tenancy they have been granted exclusive use of the driveway. The tenants recently purchased an RV and the landlord has insisted that the tenants remove it immediately. The landlord did not deny that the tenants have exclusive use of the driveway. The tenants seek an order that the landlord permit them to continue to use the driveway to park their RV.

The tenants seek \$250.00 in compensation for the loss of planters, soil and an umbrella. The tenants testified that they had four plastic planters and two wooden planters outside the rental unit which they had filled with soil. The tenants testified that the landlord emptied the soil from the planters into their own garden and loaded the planters and an outdoor umbrella into his truck. The tenants took photographs and asked the landlord to leave the items but the landlord took the items away from the

residential property and the tenants assume discarded them. The landlord testified that the planters were an eyesore and stated that she had repeatedly asked the tenants to get rid of them, but they refused. The landlord insisted that the wooden planters did not belong to the tenants, but to the landlord.

### Analysis

I find that the landlord has not proven cause to end the tenancy. The landlord bears the burden of proving on the balance of probabilities that the tenants were repeatedly late paying rent and other than her verbal testimony, she supplied no supporting evidence. In order to evict tenants because repairs are not completed, the repairs in question must be repairs of damage caused by the tenants, pursuant to section 32(3) of the Act. I find that the renovations which were the subject of the agreement between the parties are not repairs as contemplated by section 32 of the Act and I find that this cannot form the basis of an end of tenancy. I declare that the Notice is of no force or effect and I order that the Notice be set aside. As a result, this tenancy will continue.

I find that the tenants have not proven that there is a basis on which to prevent the landlord from accessing the rental unit for reasonable purposes. I am not convinced that the landlord is entering needlessly or without notice and I dismiss the tenants' application to restrict the landlord's right to enter the rental unit and an order authorizing them to change the locks on the rental unit. The landlord is reminded that section 29 of the Act requires that 24 hours written notice which includes the time, date and purpose of entry, must be given to the tenants.

I find that laundry services were part of the services provided in exchange for the rent. It appears that the landlord failed to put the tenancy agreement in writing, which she was required to do pursuant to section 13(1) of the Act, and the fact that the tenants used the laundry facilities for four years has persuaded me that use of those facilities was part of the agreement. I find that the tenants should be permitted to deduct \$50.00 per month from their rent in compensation for the loss of use of those facilities. I find that May was the first full month in which the tenants were without laundry facilities. The tenants were paying \$550.00 per month in rent when they had use of the laundry facilities. The tenants' new rental rate is \$500.00 per month for a rental which does not

include laundry facilities. For the months of May and June, the tenants may recover any amount paid over \$500.00. The tenants may deduct this sum from the \$500.00 in rent which will be owing in July.

As the landlord did not dispute that the tenants have had exclusive use of the driveway throughout the tenancy, I find that the tenants have exclusive use of the driveway. As there is no written tenancy agreement in which the tenants have agreed not to park an RV in the driveway, I find that there are no restrictions on what may be parked there. I order the landlord to permit the tenants to park their RV in the driveway.

As for the tenants' claim for compensation for the loss of the planters and umbrella, I accept that the landlord discarded these items without the permission of the tenants. The landlord is not entitled to arbitrarily dispose of the tenants' belongings. However, I find that the tenant has not proven that the wooden planters were owned by them. I find that the plastic planters and the soil in the plastic and wooden planters belonged to the tenants and I find that the umbrella belonged to the tenants. The tenants claim a total of \$250.00 for these items but have not provided any supporting evidence to show their value. I find that the tenants' \$250.00 estimate is excessive and find that \$70.00 will adequately compensate the tenants for the loss of the planters, soil and umbrella and I award the tenants that sum. The tenants may deduct \$70.00 from future rent owed to the landlord.

I find that the tenants are entitled to recover the \$50.00 filing fee paid to bring this application. The tenants may deduct this from future rent owed to the landlord.

### Conclusion

The notice to end tenancy is set aside. The tenants' rent is reduced to \$500.00 per month. The tenants may recover any amount over \$500.00 which was paid to the landlord in May and June in compensation for loss of use of laundry. The tenants may deduct \$70.00 from future rent owed to the landlord in compensation for the planters, soil and umbrella which were wrongfully taken from them. The tenants may deduct a further \$50.00 from future rent owed to the landlord to recover the filing fee paid to bring their application.

Dated June 09, 2009.