



# Dispute Resolution Services

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

## Decision

Dispute Codes: OPR, OPC, MNR, MNDC

## Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Both parties participated in the conference call hearing.

At the hearing the parties revealed that the tenant currently has two other claims before this tribunal. The first claim, which included a claim to set aside a notice to end tenancy for unpaid rent dated April 3 and a notice to end tenancy for cause dated March 31, was heard on May 6 and adjourned to June 12. The notice to end tenancy for unpaid rent dated April 3 is not before me. The notice to end tenancy for cause is part of the landlord's application, but I decline to rule on this notice as it is part of the prior hearing. The hearing which is set to reconvene on June 12 will address this notice.

The tenant's second claim is to dispute the notice to end tenancy for unpaid rent dated May 2 which is before me in the landlord's current application. The tenant's application was scheduled to be heard on June 16. However, as it deals with the same notice to end tenancy as the application before me, this decision will be a final decision on both the landlord's application and the tenant's application to dispute the notice to end tenancy dated May 2. The hearing scheduled for June 16 at 10:30 a.m. is therefore cancelled as the issue has been adjudicated upon in this decision.

At the hearing the parties were explicitly told that they should not submit further evidence as the hearing was closed. Despite this, the landlord submitted further evidence. This evidence, received by the Residential Tenancy Branch on June 5, was neither read nor considered.

## Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order as claimed?

Are the tenants entitled to an order that the landlord comply with the Act and allowing access to the rental unit for the tenants?

### Background and Evidence

The parties agreed that the tenancy began in September 2007. The parties further agreed that up until March 1, the rent was set at \$900.00. The landlord claimed that on November 25 she served the tenants with a notice of rent increase, by which she purported to raise the rent from \$900.00 per month to \$933.60 per month effective March 1. The tenant testified that she did not receive the notice of rent increase until May 5.

The landlord testified that on May 2 she served the tenants with a 10-day notice to end tenancy for unpaid rent (the "Notice"). The tenant acknowledged having received the Notice on May 5. The tenant objected that the notice had been backdated to May 2 and suggested that the notice was invalid because of the backdating. The tenant testified that she paid \$300.00 in rent to the landlord for May and had withheld the rest of the rent because she expected to be awarded monies pursuant to her application for dispute resolution, the hearing for which will be reconvened on June 12. The landlord acknowledged having received only \$200.00. Neither party was able to produce a rental receipt showing the amount paid or received. The landlord seeks an order of possession based on the Notice and a monetary order for \$733.60 in unpaid rent for May and \$933.60 for loss of income in June. The landlord further seeks an order for \$67.20, which is the amount of the rent increase that was unpaid in the months of March and April.

The landlord testified that she has had to borrow money at a rate of 29% in order to pay the mortgage on the rental unit and seeks an order for \$293.39 which she calculates as the total amount of interest she will have paid over the next year on the loan as well as the cost of gas driving back and forth either from the bank or the rental unit.

The parties agreed that the tenants had changed the locks on the rental unit during the tenancy and had not given the landlord a copy of the key. The landlord seeks an order for \$80.00 which she testified is the cost of re-keying the lock as well as \$40.00 which she claims is the value of the original lock which the tenant changed. At the hearing I

advised the tenant that she could not change locks and withhold a key from the landlord unless she had an order from a Dispute Resolution Officer authorizing her to do so. The tenant agreed to provide a copy of the key to the landlord.

The landlord testified that she has spent \$15.00 on photographs, stationary and long distance calls in preparation for this hearing and seeks to recover this sum from the tenants.

The parties agreed that the tenant A.J. backed his vehicle into a banister outside the rental unit, dislodging it from the home and stairs. The landlord provided a photograph of the banister and testified that she had received a quotation from a carpenter indicating that it would cost \$171.20 to repair it. This quotation was the lower of two quotations. While the tenants admitted liability for the damage to the banister, they disputed the cost of repair as they felt the repair could be more quickly and inexpensively accomplished.

The landlord testified that the yard in the rental unit had a number of items in it, some of which belonged to the landlord, as well as a sofa bed belonging to the tenants. The landlord testified that she received a notice from the City in early January advising that she must clean the yard or be billed in her taxes for the cost of the City cleaning the yard. The landlord testified that she told the tenants in January that they must remove the sofa bed. The landlord did not remove all of her own belongings and the tenants did not remove the sofa bed. In or about the month of February, the City removed all of the items from the yard and charged the landlord \$171.20. The landlord testified that the tenant orally agreed to pay \$100.00 of the charge but paid only \$20.00. The landlord seeks an order for the remaining \$80.00 which she believes should be attributed to the tenants. The tenant testified that she was unable to move the sofa bed into the house because the house was full of the landlord's furniture. The tenants covered the sofa bed with a tarp, but it was damaged by the elements anyway. The tenant testified that the landlord did not tell them until February 11 that the sofa bed needed to be moved and that the bed was removed by the City the following day. The tenant testified that she agreed to pay only \$20.00 of the removal charge.

The landlord testified that she had left three old curtain rods in the rental unit which

were older but in good shape and which she estimated had a value of \$25.00 each. The landlord testified that the tenants put the curtain rods outside where they were damaged and had to be discarded. The landlord testified that the tenants also threw out plants which the landlord had left in the rental unit and claims a total of \$25.00 as the value of the plants. The tenant testified that the landlord had left a considerable amount of her belongings in and outside the rental unit and that the items outside the unit were not inventoried. The tenant specifically recalled putting the curtain rods in the landlord's car. The tenant testified that shortly after she moved in she gave the landlord a statement and asked the landlord to sign acknowledging that her items were stored at the property at the landlord's own risk. The landlord refused to sign the statement.

### Analysis

The allowable rent increase for 2009 is 3.7%. The landlord purported to have increased the rent from \$900.00 to \$933.60, which is 30 cents more than the allowable increase. I find that the rent increase proposed by the landlord is illegal and therefore unenforceable. I find that the rent payable each month remains at \$900.00 per month. The landlord's claim for the unpaid rent increase for March and April is dismissed.

I find that the Notice is not invalid because it was backdated. The tenant acknowledged having received the Notice on May 5. Section 26(1) of the Act provides as follows:

- 26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that the tenant had no right to deduct any portion of the rent for May or June. As the tenant acknowledged that the entire amount of rent was not paid for May, I find that the tenancy must end and I grant the landlord an order of possession. This order may be filed in the Supreme Court and enforced as an order of that Court.

As for the landlord's monetary claim, I find that the landlord has established a claim for \$700.00 in unpaid rent for May and \$900.00 in loss of income for June. The tenant had the burden of proving the amount that was paid in May. Because the tenant was unable to prove that she paid more than \$200.00 in the month of May, I have accepted the

landlord's testimony that only \$200.00 was received. The landlord is awarded a total of \$1,600.00 for unpaid rent and loss of income.

I dismiss the landlord's claim for the interest payable on her loan and the cost of gas. I find that the claim for interest is too remote and the charge for gas is an expense the landlord should expect to bear in the course of doing business as a landlord.

I dismiss the landlord's claim for the cost of the original lock on the rental unit. The landlord provided no proof of the value of the lock and in any event, the lock has been replaced.

I find that the landlord's application for the cost of re-keying the lock is premature. The tenants have agreed to provide the landlord with a key to the new lock. If the tenants fail to provide this key to the landlord, I grant the landlord leave to reapply for the cost of re-keying or replacing the lock.

The landlord's claim for the cost of developing photographs, stationary and long distance calls is dismissed. Under the Act, the only litigation related expense I am empowered to award is the cost of a filing fee.

Although the tenants argued that the landlord's estimate for the repair of the banister is excessively high, the tenants provided no evidence to show that the banister could be repaired for less than the quoted price. In the absence of such evidence, I find that the landlord is entitled to recover \$171.20 for the repair of the banister and I award the landlord this sum.

The landlord acknowledged that some of the items removed from the yard by the City belonged to her. The invoice provided by the City does not break down the cost of removal by identifying how much was charged for the sofa bed and how much for the other items. I find that the landlord has failed to prove the quantum of her claim in that she has not proven the percentage of the bill which should rightfully be attributed to the tenants. Accordingly I am unable to find that the tenants should be held liable for more than the \$20.00 already paid and I therefore dismiss the landlord's claim.

As for the landlord's claim for the loss of the plants and the curtain rods, I find that the

landlord has failed to prove the value of these items or that the tenants caused the damage to the items. The landlord chose to abandon or store many of her own possessions at the rental unit and by refusing to sign a statement that the items were stored at her own risk, attempted to impose a burden on the tenants to care for those items. I find that the tenants had no positive obligation to actively care for the items and were not obligated to ensure the plants were kept alive or that items left outside were protected from the elements. I am not satisfied that the curtain rods were left inside the rental unit and am unable to find that the tenants removed the rods from the unit and left them outside. The landlord's claim is dismissed.

I find that the landlord has established a claim for \$1,771.20 which represents \$1,600.00 in unpaid rent and loss of income and \$171.20 for the banister repair. I grant the landlord an order under section 67 for \$1,771.20. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The tenant's claim for an order setting aside the notice to end tenancy is dismissed. As the tenancy is ending, the remainder of the tenant's claim is dismissed as moot

### Conclusion

The landlord is granted an order of possession and a monetary order for \$1,771.20. The tenant's claim is dismissed.

Dated June 09, 2009.