

DECISION AND REASONS

Dispute Codes OPL, OPR, MNDC, MNR, MNSD, CNL, CNR, DRI, MNR, RR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution, filed by both parties.

The Landlord applied to end the tenancy and obtain an order of possession, based on a 10 day Notice to End Tenancy for unpaid rent, amongst other relief, such as monetary orders for unpaid rents.

The Tenants applied to dispute the 10 day Notice to End Tenancy, amongst other relief, such as monetary orders for work done at the rental unit.

On October 5, 2009, in an Interim Decision and Order, I found that the Landlord was entitled to an order of possession effective **two days** after service on the Tenants, based on the 10 day Notice to End Tenancy and unpaid rent. Therefore, the portion of the Tenants' Application for Dispute Resolution to cancel the Notice to End Tenancy is dismissed.

At the time of the Interim Decision, I reserved my Decision on the other issues in these Applications such as what monetary relief either party is entitled to. This Decision deals with those outstanding issues.

Issues(s) to be Decided

Is the Landlord entitled to the monetary relief sought?

Are the Tenants entitled to the monetary relief sought?

Background and Evidence

This tenancy was approximately eight years old when the disputes arose that led to this hearing.

I believe it is important to note there was no written tenancy agreement, nor were there written agreements regarding the other arrangements made in this tenancy.

Both parties agreed that over the course of the tenancy the parties established a practice where the Tenants would make repairs to the property and the Landlord would

allow them to deduct the costs of these repairs from the rent due. The Tenants would keep track of the repairs and then once a year, usually in June, the parties sat down to establish a rent reduction, and discuss the tenancy continuing and the rent payments and any increases for the following year. It was admitted by both parties that at the time of the rent increases, both parties agreed to these and to continue the tenancy for a further year.

Both parties agree that the Tenants ran a daycare facility out of the rental unit.

In July of 2009, the Landlord informed the Tenants he was giving them three months notice that he was ending the tenancy, in order to have close family members move into the rental unit.

Both parties agree that on July 27, 2009, the Landlord served the Tenants with a two month Notice to End Tenancy, for the Landlord's use of the rental unit. Under the provisions of the Act relating to section 49, the Tenants were then entitled to the equivalent of one month of free rent under the two month Notice. The effective date of the Notice to End Tenancy was October 31, 2009.

The Tenants became concerned that they would not be compensated for the work they had done to the Landlord's property since the last reconciliation of repairs and rent reductions. They stopped paying their rent in August and did not pay rent for September or October of 2009, as well.

The Landlord claims for three months of rent for August, September and October of 2009, at \$1,670.00 per month, or \$5,010.00, less \$20.00 for a permit allowed to the Tenants. Therefore, the total claim of the Landlord is \$4,990.00.

The Tenants do not dispute that they did not pay rent for the last three months of the tenancy. They request a set off from the rent for work the claim to have done.

The Tenants claim \$2,000.00 for replacing the garage roof, \$500.00 for a vent from the hot water tank to the exterior, \$1,800.00 for a new staircase at the rental unit, \$390.00 for painting an exterior fence, \$80.00 for an exterior tap, \$260.00 for supplies for the flower beds, and \$325.00 for a replacement stove. The total claim of the Tenants is \$5,355.00. The Tenants have also claimed they overpaid rent at the rental unit.

The Landlord stated he believed that the work done at the unit was not emergency work. When the Tenants complained the garage roof was leaking, and causing harm to the male Tenant's construction tools and equipment, the Landlord gave them two tarps to put over the roof. He claims he did not authorize the repairs to the roof. He claims the Tenants repaired the stairs at the unit for the benefit of the daycare. He disputes the costs of some of the items, as he testified he could have done the work, or supplied materials cheaper, than what it cost him for the Tenants to perform this work. For example, the Tenants installed an exterior water tap and request \$80.00 for this, while the Landlord claims he could have done it for \$10.00

Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find the Tenants breached the Act when they ceased paying rent in August. Although they were entitled to the equivalent of one month of rent under the two month Notice to End Tenancy, they were not entitled to withhold rent for the other months in this circumstance since I do not find they performed emergency repairs to the unit. (I will discuss the repairs claim in more detail below.)

I find the Landlord is entitled to rent for the months of August and September of 2009, in the amount of **\$3,340.00**. The Tenants were entitled not to pay rent for October 2009, under the two month Notice to End Tenancy.

Therefore, I find that the Landlord has established a total monetary claim of **\$3,390.00** comprised of \$3,340.00 in unpaid rent and the \$50.00 fee paid by the Landlord for this application. I order that the Landlord retain the deposit and interest of **\$829.47** in partial satisfaction of the claim. This leaves a balance due to the Landlord of **\$2,560.53**, subject to any set off below from the Tenants' claim.

As to the Tenants claims, I dismiss their request for a repayment of perceived overpayment of rents. I find that each year when the parties reconciled the rents and repairs and established a new monthly rent amount, they entered into a new oral tenancy agreement for another year. In other words, there were no illegal rent increases, as the parties had a new oral tenancy agreement each year.

I do allow the Tenants claim for **\$2,000.00** for replacing the garage roof. They provided an invoice and evidence to support this work was done. While it was not an emergency repair, I do find there was a pattern where they did major repairs and were reimbursed by the Landlord for this work. They sent an email to the Landlord explaining they had to replace the garage roof and informed him they also had a quote to repair the roof of the house. At that time, the Landlord did not object to this and sent a reply telling them to forward him the quote.

I dismiss the Tenants' claims for the \$500.00 vent, \$1,800.00 for a staircase, \$390.00 for painting, \$80.00 for a tap, \$260.00 for gardening supplies and \$325.00 for a stove, since the Tenants had insufficient evidence to show these were the costs incurred or spent. They provided no invoices, bills or receipts to substantiate these amounts, and therefore, I find they have failed to verify the damage or loss occurred or the actual loss or damage claimed.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I also do not allow the Tenants to recover their filing fee, as they breached the *Act* in failing to pay rent and were largely unsuccessful in their claims.

Therefore, pursuant to section 72 of the *Act* I order a set off of the amounts awarded in this matter. The Tenants owe the Landlord **\$2,560.53**, and the Landlord owes the Tenants **\$2,000.00**.

The Landlord shall have an order for the balance due of **\$560.53**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: November 3, 2009.

Dispute Resolution Officer