



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes                      CNR, MNDC, OLC, FF, O

### Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy for Unpaid Rent, for compensation for damage or loss under the *Act*, regulation or tenancy agreement, an order for the landlord to comply with the *Act*, other issues and to recover the cost of filing this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were hand delivered to the landlords on September 14, 2009. The landlords confirmed they had received them.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

### Issues(s) to be Decided

- Should the notice for unpaid rent be cancelled?
- Are the tenants entitled to compensation for damage or loss and if so how much?
- Are the tenants entitled to an Order for the landlords to comply with the *Act*, regulations or tenancy agreement?
- Are the tenants entitled to recover the filing fee from the landlords for the cost of the application?

## Background and Evidence

This tenancy started on or about August 09, 2009. The tenants pay rent of \$1,400.00 per month which is due on the 1<sup>st</sup> of each month. The tenants had an agreement with the tenants renting the property that they would rent the property after the other tenants moved out. The landlords were away at the time but the tenants were told by the previous tenants that the landlords would not have a problem with this. On August 01, 2009 the tenants moved some of their belongings into the property. On August 05, 2009 they had a meeting with the landlords who agreed that they could move into the property. The tenants testify that they gave the landlords two cheques of \$1,400.00 each. These cheques were marked for August rent and last months rent respectively.

The tenants testify that the old tenants moved out on August 09, 2009 and they called the landlords to come over to assess the house. The landlords found the house to have been left in a poor condition from the previous tenants. The tenants had entered into an agreement with the previous tenants that they would paint an upstairs bedroom and a basement bedroom at no cost to the landlords. The tenants testify that they started to clean the property and found that all three bathrooms and the kitchen suffered badly with black mould. The tenants testify that they had a meeting with the landlords on August 25, 2009 to discuss what should be done about the mould issues. At this time the landlords stated that they would give the tenants their money back if they moved out. The landlords told the tenants that a contractor would come to assess the bathrooms.

On September 08 the landlord called the tenants to ask about the rent for September. The tenants sought advice and were told that landlords can not ask for the last months rent in advance and that this rent cheque could be used for Septembers rent instead. The tenants claim the landlords have never asked for a security deposit or pet damage deposit from them.

On September 11, 2009 the landlords served the tenants with a 10 Day Notice to End Tenancy for unpaid rent for September, 2009 by attaching this Notice to the door of the property.

Residential Tenancy Branch  
Ministry of Housing and Social Development

The landlords testify that the tenants did give them two cheques in August 2009. The landlord thought that these cheques were rent for August, 2009 of \$1,400.00 and the security deposit and pet damage deposit totalling \$1,400.00. The landlords testify that at no time did they ask the tenants for a cheque for the last months rent. The landlords agree that the rental property was in a poor condition after the pervious tenants had moved out. They testify that they would not have normally re-rented the property until the place had been cleaned and repaired after a tenant moved out. As the tenants had entered into an agreement with the previous tenants about renting the property and the tenants had started to move some of their belongings into the property they agreed the tenants could rent the property.

The landlord testify that after they discovered the extent of the mould and other issues they asked the tenants on two occasions if they wanted to have their cheques refunded so they could move out. They also agreed that the tenants could take the time to find another rental unit. The landlords testify that the tenants declined this offer and remained in the property. The landlords confirm that they hired a contractor to carry out work on the kitchen and bathroom and this work is still ongoing. The landlords state that the tenants have paid rent for October and November, 2009 since the 10 Day Notice was issued.

The tenants seek compensation for the mould issues and loss of the use of the bathroom. They request the rent for August is repaid or offset against another months rent in compensation. The tenants also seek moving costs if they have to move from the rental property. The tenants also seek an order for the landlord to comply with the *Act*.

The landlord seeks an Order of Possession based on the 10 Day Notice issued on September 11, 2009.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find the landlords have no evidence to suggest that they did ask the tenants for the security deposit and pet damage deposit and they accepted the cheques from the tenants

Residential Tenancy Branch  
Ministry of Housing and Social Development

marked 'August rent' and 'last months rent'. The landlords issued a receipt for these payments detailing that they were for August rent and damage deposit but this was not provided until October 02, 2009 and dated August 05, 2009. Therefore, I find the tenants cheques were marked as stated and the second cheque can be applied to Septembers rent. I therefore find, when the landlord issued the tenants with a 10 Day Notice to End Tenancy for unpaid rent, the rent was not in arrears. I further find that the landlord accepted the rent payments for October and November, 2009 after the date the 10 Day Notice to End Tenancy would have come into effect. Therefore, by accepting these rent payments the landlord has agreed that the tenancy may continue after the date of the Notice.

Section s 20(a) and 20(c)(1) state:

A landlord must not do any of the following:

- (a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement;
- (c) require a pet damage deposit at any time other than
  - (i) when the landlord and tenant enter into the tenancy agreement,

I find in favor of the tenants claim to cancel the Notice to End Tenancy and the tenancy may continue.

The tenant has claimed compensation for issues with mould and for the loss of the use of the bathroom. I find the landlord has taken immediate action after the discovery of the mould issues and has employed a contractor to carry out work to remedy these problems in the rental property. I find the landlord acted fairly in offering the tenant two opportunities to move from the rental unit because of these issues and have their rent refunded; however, the tenants declined these offers. I find the landlords have complied with section 32 of the Act in regard to repairs



# Dispute Resolution Services

Page: 5

Residential Tenancy Branch  
Ministry of Housing and Social Development

and maintenance Therefore, I dismiss this section of the tenant's application without leave to reapply.

I further find that as the tenancy will continue I dismiss the tenant's application for moving costs without leave to reapply.

## Conclusion

The tenant's application to cancel the Notice to End Tenancy for unpaid rent is allowed. The 10 Day Notice to End Tenancy dated September 11, 2009 is cancelled and the tenancy will continue. As the tenants have been successful in setting aside the Notice, they are entitled to recover the \$50.00 filing fee for this proceeding and may deduct that amount from their next rent payment when it is due and payable to the landlord.

The remainder of the tenant's application is dismissed without leave to reapply.

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 02, 2009.

---

Dispute Resolution Officer