



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, FF, MNDC, OLC, ERP, RP, O

Introduction

This hearing was convened in response to cross-applications by the landlord and the tenants. All parties appeared by way of conference call and gave affirmed evidence. The landlord was assisted by an interpreter who was also affirmed to well and truly interpret the evidence from the English language to the Greek language and from the Greek language to the English language to the best of his ability.

The landlord has applied for an Order for Possession for unpaid rent or utilities, a monetary order for unpaid rent or utilities, and an order permitting him to retain the security deposit in partial satisfaction of his claim.

The tenants have applied for an order to cancel a Notice to End Tenancy, a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, and for an order that the landlord comply with the *Act*, make repairs to the unit and make emergency repairs for health or safety reasons.

The tenants vacated the unit on January 2, 2010. Therefore, their applications to cancel the Notice to End Tenancy and for repairs, and the landlord's application for an Order for Possession are dismissed without leave to reapply.

Issues(s) to be Decided

Is the landlord entitled to a monetary order to recover rent arrears, and if so, is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

Landlord's Application

The tenancy began in April, 2005 with a rental amount of \$1,050.00 per month. The building had tenants in the upper unit as well as the lower unit. The tenants in this matter rented the lower unit. The landlord testified that the tenants were also responsible for \$200.00 per month for utilities, being hydro and gas. It had initially been a lower amount, but 50% was agreed by the parties because there were 8 people in each unit.

The tenants testified that she lived in the lower unit with her 4 children, and there never were 8 people residing in her unit. She referred to an Addendum which is signed by the landlord and provided as evidence that she would be responsible for 40% of the utilities and had never agreed to an increase.

The landlord testified that the tenants in the lower unit were responsible for cutting the grass and would receive no rent abatement for it. The Addendum provided as evidence, however, states: "The tenants in the upper suite will do yard maintenance i.e.: cut the lawn."

The landlord testified that he was vacationing in Greece from May 1, 2009 until October 5, 2009. He had his grandson collect rent from his tenants. The grandson was to collect

the rent on the 1st of each month and deposit same into his grandfather's account. He stated that while he was in Greece, he spoke to his grandson who told him that the tenants in the lower unit had not paid the rent or utilities. No money was deposited into the account for this unit. Rent and utilities were to be paid in cash and the landlord did not provide receipts to his tenants. When questioned about his bookkeeping practices, the landlord stated that he had no ledgers or statements to provide as evidence.

The tenants testified that the grandson did attend to collect each month, and they paid him \$1,250.00 cash each month while the landlord was away.

The landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities for failing to pay rent in the amount of \$7,500.00 that was due on the 1st of October, 2009. The notice is dated October 23, 2009, after the tenants made their application for Dispute Resolution on August 24, 2009. The landlord had returned from Greece on October 5, 2009.

The landlord is requesting \$6,300.00 in unpaid rent for May to October, 2009, and utilities in the amount of \$1,200.00 for the same months. I find that the landlord has not submitted sufficient proof that rent and utilities for that period were not paid.

Tenant's Application

The tenants testified that they had the smaller unit and no control over the heat; the tenants in the upper unit had the only thermostat. They testified that the landlord would go to their residence on the 1st of the month to collect the rent and utilities, and for the last 2 years they had been paying \$200.00 per month for the utilities. Prior to that they were paying \$180.00 or \$185.00, but never received copies of BC Hydro bills or Terasen Gas bills, which was in violation of the Tenancy Agreement. When the tenants did request copies of the utility bills, the landlord would argue about it. He did, on occasion, show the Hydro bills, but only when they argued the amounts and he did not show the Terasen Gas bills. Rent was always paid in cash at the landlord's request,

however no rent receipts were ever provided by the landlord. At one point, the tenants testified, the landlord advised that the utilities had gone up to 45% but provided no written evidence of that, nor did the tenants ever agree to the increase.

The tenants testified that during the month of September, the landlord asked the tenants to change the utility bills into her name but they refused. I find this evidence to be in error as the evidence of parties was that the landlord was in Greece until October 5, 2009. I do accept the evidence, however, that the landlord asked the tenants to change the utilities into their name, but that conversation likely occurred after October 5, 2009.

The tenants then received a letter from BC Hydro, a copy of which was presented in evidence that stated that the account was closed on October 29, 2009 and that the power would be disconnected if they did not apply for service by November 12, 2009. It further stated that if it was disconnected they would be charged \$125.00 plus GST for restoring the service and there would be no guarantee of same day reconnection. This evidence was not disputed in the landlord's testimony. The tenants then amended their application for Dispute Resolution to include a request for an order that the services be restored to the landlord's name. This threat of losing power was frightening to the tenants, and I find that they entitled to a similar award in compensation.

One of the tenants also testified that the unit became mouldy which caused the tenants and her 4 children to become sick. Photographs of mould on a ceiling and around the toilet were provided as evidence. The youngest daughter, age 8, missed a lot of school due to illness that her mother feels was caused by the mould in the unit. She was also on antibiotics for allergies to mould, and her other daughter developed a fungus on her leg. The tenants testified that they would have called the health department, but they would have closed the building down and all tenants would have to find another place to live.

The tenants testified that the mould was a result of several floods caused by the tenants in the upper unit. On one occasion, there were inches of water on her floor. A tenant

attended the upper unit and discovered that a tap had been left on in a bathroom, and no one was in that bathroom when she arrived. The tenants from the upper unit helped her to bail the water and clean it up, but water had leaked into light fixtures, bulbs blew and the globes filled with water in her unit.

On another occasion, a pin-hole was found in a pipe. The landlord was notified, who put a hole in the ceiling in the tenant's bathroom to repair the pipe, and never fixed the hole in the ceiling. A photograph of the hole in the ceiling was provided prior to this hearing. The tenant testified that she felt the hole was unsightly, dangerous and caused an unhealthy mould in the unit.

The tenants also testified that there were problems with the electrical in the unit. The circuit board for the entire building was in a bedroom in the lower unit. The circuits shut off several times from using the kettle, or when the tenants in the upper unit used the microwave oven. The landlord did call an electrician, who replaced a circuit.

The tenants testified that a tenant in the upper unit was collecting \$100.00 per month from the landlord for cutting the grass, which was disputed in the landlord's testimony. The tenants stated that it was a large yard, and that tenants in the upper unit were not cutting the grass, a tenant in the lower unit was and was not receiving any payment for this service, and was supplying the gas for the lawnmower. The Tenancy Agreement clearly shows that the tenants in the upper unit were responsible for this service.

Analysis

Several sections of the *Residential Tenancy Act* apply to this dispute. I will firstly deal with the landlord's application for loss of rent for the months of May to October, 2009.

26 (2) A landlord must provide a tenant with a receipt for rent paid in cash.

The grandson was not called to give evidence about collecting rent and utilities while the landlord was in Greece. Both the landlord and tenants testified that no receipts were ever issued, and, as a result, coupled with the fact that the landlord was not able to produce any ledgers or bookkeeping evidence, I find that the landlord has not submitted sufficient evidence that rent and utilities were not paid. I dismiss the landlord's claim for unpaid rent and utilities.

The *Act* further states that:

- 27** (1) A landlord must not terminate or restrict a service or facility if
- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
 - (b) providing the service or facility is a material term of the tenancy agreement.

The evidence of the tenants is undisputable that the threat of losing power, which was against the *Act* and the Tenancy Agreement existed as a result of the landlord's actions. Section 28 of the *Residential Tenancy Act* also deals with the protection of a tenant's right to quiet enjoyment:

- 28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
- (a) reasonable privacy;
 - (b) freedom from unreasonable disturbance;
 - (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
 - (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find that the tenants were subjected to an unlawful and unreasonable threat of losing power when the landlord had the power account removed from his name and that the application of the tenants for compensation is justified, and I order that the landlord compensate the tenants \$125.00 for terminating the service and ½ month's rent for the loss of quiet enjoyment.

With respect to the mould in the unit and the hole left in the ceiling in the bathroom, I refer to Section 32 of the *Act*, which states as follows:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenants.

The tenant's claim for health concerns was not supported by any medical evidence, and the flood caused by the tap being left on in the upper unit was not caused by any negligence of the landlord, but I do find that the landlord had an obligation under Section 32 to repair the ceiling and deal with the mould. I further find that the application by the tenants for compensation for the breach of Section 32, for the mould and hole in the ceiling of the bathroom is justified, and I award ½ month's rent, being \$525.00 for that breach.

The Addendum to the Rental Agreement for Lower Suite at the subject address clearly states that: "The tenants in the upper suite will do yard maintenance i.e.: cut the lawn." The landlord did not disagree with the tenant's evidence that the tenants in the lower unit were cutting the lawn; however, I cannot accept the hearsay evidence that a tenant in the upper unit was collecting \$100.00 per month from the landlord for that service. I do, however, accept the evidence of the tenants that they were cutting the lawn and providing the gas for the lawnmower, which was clearly not the responsibility of these

tenants. It was not explained why the tenants did not refuse to cut the lawn, and therefore, I make no award against the landlord for that service.

The Addendum also states: "9. You are responsible for 40% of the Gas and Hydro bill on top of the monthly rent payment these bills are due within 5 days of receiving a copy of the bills." I accept the evidence of the tenants, which was not disputed by the landlord, that copies of the bills were never provided by the landlord, but only shown when specifically requested by the tenants. I accept the evidence of the tenants that they paid \$180.00 or \$185.00 at the beginning of the tenancy and that for the last 2 years they paid \$200.00 per month. I cannot find that the tenants paid 50% of the utilities for 4 years because they did view some, but not all of the BC Hydro bills and none of the Terasen Gas bills. I do find, however, that the landlord overcharged for utilities for the last 2 years of the tenancy. The explanation of the landlord that the utilities went up is in breach of the *Act* and the Tenancy Agreement. In the absence of any evidence to the contrary, I find that the tenants were responsible for \$185.00 per month in utilities and that for the last 2 years of the tenancy, the tenants paid \$15.00 per month more than stated in the Tenancy Agreement. I therefore find that the tenants are entitled to an award of \$360.00.

Conclusion

The landlord's application for a monetary order for unpaid rent and utilities is hereby dismissed without leave to reapply.

The application of the tenants for rent abatement for cutting the lawn is hereby dismissed without leave to reapply.

I hereby award to the tenants the sum of \$1,535.00, which is comprised of \$360.00 for excessive charges in utilities, \$125.00 for the breach of Section 27 of the *Act* by removing the hydro account from his name without the consent of the tenants, \$525.00

for the breach of Section 32 of the *Act* by not repairing the ceiling damaged by the landlord's repairs, and \$525.00 for the landlord's breach of Section 28 of the *Act* by causing unnecessary and unreasonable disturbance in refusing to provide copies of utility bills, arguing with the tenants about what was owed, and deliberately causing the threat of losing power to the unit.

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: February 17, 2010.

Dispute Resolution Officer