

DECISION

Dispute Codes CNR, MNDC, ERP, RP, RR, OPR, OPB, MNR, MNSD, 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 perform repairs and an order permitting the tenants to reduce rent and a cross-application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties were present at the beginning of the conference call hearing and confirmed that they had received each others' application for dispute resolution.

The landlord participated in the first 10 minutes of the hearing and then disconnected without warning. Attempts were made to telephone the landlord at the telephone number he provided on his application for dispute resolution, but the landlord did not answer the telephone. The hearing proceeded in the landlord's absence as it seemed the landlord had disconnected of his own volition.

Issues 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 a monetary order as claimed?

Should the landlord be ordered to perform repairs?

Should the tenants be permitted to reduce their rent?

Background, Evidence and Analysis

The rental unit is located on the middle floor of a multi-storey residence in which the landlord resides on the top floor and another tenant resides on the lower floor. The

residential property also contains a garage which is rented out to a third tenant. The tenancy began on August 1, 2009 and the tenants agreed to pay \$800.00 in rent, which included natural gas, and to put the hydro bill in their own name and be responsible for all hydro payments. I address the tenants' claims and my findings around each as follows:

- [1] **Stove.** The tenants seek compensation of \$100.00 per month for 7 months in which the stove in the rental unit did not function properly. The tenants seek further compensation for the cost of renting a stove. The tenants testified that within two weeks of the time their tenancy began, the stove broke down, with two elements ceasing to work as well as the oven. The tenants immediately advised the landlord of the problem, and after a discussion the landlord permitted them to deduct \$50.00 from their rent for one month. The tenants claim that the deduction was compensation for the loss of use of the stove for one month. The landlord claims that the money was given to permit them to purchase a new stove. The tenants testified that they were able to secure a rental from a friend and are currently renting a stove at a rate of \$25.00 per month. The tenants paid a \$50.00 deposit for the stove. I find that the landlord gave the tenants compensation for the loss of use of the stove for one month and that they have therefore been compensated for that loss. I dismiss the claim for loss of use of the stove. I find that the landlord is obligated to provide a stove for the tenants and that he must therefore bear the cost of the rental of the stove. The tenants began renting the stove in September and to date have paid \$200.00 in rental costs. I award the tenants \$200.00 for 8 months of stove rental. As the tenants will presumably receive the deposit back when they return the stove, I dismiss the claim for the amount of the deposit. The landlord will continue to pay for the rental of the stove as long as he fails to provide a working stove in the unit and the tenants may continue to deduct \$25.00 per month from their rent until such time as the landlord provides a stove in working condition.
- [2] **Leaks.** The tenants seek an award of \$20.00 per month for the inconvenience of a leak around their kitchen sink and an award of \$50.00 per month because they are

unable to use their bathtub. The tenants testified that there is no seal around the kitchen sink and that when water is splashed out of the sink, it leaks to the cabinet below. The landlord acknowledged that he had received notice of the problem with the kitchen sink and when asked why it had not been repaired, he replied that he did not have keys to the rental unit and could only enter when the tenants were home. The landlord disconnected from the conference call at this point and therefore did not respond further to this or other claims. The tenants testified that when they bathe in their bathtub, the tenants downstairs complain that water is leaking into their unit. The tenants theorized that there must be a problem with the overflow in the bathtub as no complaints are made when the tenants shower using the same bathtub. The tenants seek compensation for being unable to bathe and having to take showers instead. I find that the lack of a seal around the kitchen sink is a minor inconvenience. I award the tenants a total of \$15.00 for the inconvenience they have experienced up to the date of the hearing. I find that the landlord could easily have repaired the problem while the tenants were home, but chose not to act. I order the landlord to repair the sink by creating a seal between the sink and the countertop and to complete this repair no later than May 10, 2010. If the landlord fails to repair the sink, the tenants have liberty to bring an application for further compensation. I accept that there must be a problem with the overflow in the bathtub. It does not make sense that the tenants could consistently splash so much water on the floor that the tenants on the lower floor would experience a leak. However, as the bathtub overflow is located at a high point in the bathtub, I find that the tenants have not been prevented from using the bathtub, but merely filling it up to the point of the overflow. I find that an award of \$30.00 will compensate the tenants for this inconvenience up to the date of the hearing. The tenants are therefore awarded a total of \$45.00 for leaks in the rental unit. I order the landlord to perform whatever repairs to the bathtub which are required to prevent further leaking and permit the tenants to completely fill the bathtub and to complete this repair no later than May 10, 2010. If the landlord fails to repair the bathtub, the tenants have liberty to bring an application for further compensation. The tenants are therefore awarded a total of \$50.00 for leaks in the rental unit.

[3] **Refrigerator.** The tenants seek an award of \$150.00 per month for the loss of use of their refrigerator, reimbursement of \$50.00 for the purchase of a mini-fridge and \$154.81 as the cost of food that spoiled when the refrigerator stopped functioning. The tenants testified that the refrigerator stopped functioning on January 15 and that while the landlord had initially promised them a replacement, he changed his mind and refused to replace the refrigerator. The tenants testified that when it became apparent that the refrigerator was not functioning properly, they spoke with the landlord who offered to permit them to store items in his refrigerator. They moved some items to the landlord's refrigerator but he refused to let them access the items. The tenants purchased a small refrigerator to use in the interim and claim that due to its size and limited capabilities, they are unable to store the same foods they previously had stored. Although in their description of their claim the tenants claim to have included receipts in Appendix M of their submissions, there is no Appendix M and no receipts appear elsewhere in the submissions. I find that the landlord was obligated to provide a working refrigerator and that as of January 15, the landlord has been in breach of that obligation. I find that the tenants are entitled to compensation for the loss of that appliance. I find that \$100.00 per month will adequately compensate the tenants and I award the tenants \$350.00, which represents 3 ½ months without use of the refrigerator. I order the landlord to supply the tenants with a working refrigerator no later than April 30, 2010. If the landlord fails to supply the tenants with a working refrigerator, the tenants may continue to deduct \$100.00 from their rent each month that the landlord fails to provide them with a working refrigerator. I recognize that the tenants attempted to minimize their losses by obtaining the mini-fridge, but find that as the tenants will retain possession of that refrigerator, it is inappropriate to visit the cost on the landlord.

[4] **Loss of quiet enjoyment.** The tenants seek compensation of \$2,000.00 each for loss of quiet enjoyment of the rental unit. The tenants testified that in addition to the ongoing problems with the appliances and leaks, the landlord has engaged in other activities which appear designed to harass them. The landlord at one point cut off the natural gas for 3 days, has piled garbage in their parking spot and took

the tenants' deep freeze in an attempt to sell it to BC Hydro. Further, the landlord refused to communicate with the tenants, not answering their telephone calls and refusing registered mail, depriving the tenants of the opportunity to present complaints to him. I accept the tenants' undisputed testimony and find that the landlord has behaved in a way which has deprived the tenants of their enjoyment of the rental unit. I find that the tenants are entitled to compensation and I award the tenants \$400.00 for the loss of quiet enjoyment they have experienced up to the date of the hearing.

- [5] **Hydro.** The tenants seek compensation for hydro bills they have paid during the tenancy. The tenants testified that although they agreed to pay for hydro, during the tenancy it came to their attention that they were paying for hydro for all of the tenanted suites, which include the rental unit, the basement suite and the garage suite. The tenants \$253.53 for the period from August 21 – October 27 and \$674.40 for the period from October 27 – December 23. The tenants entered into evidence partial invoices. The invoice for August 21 – October 27 shows that \$471.14 is due for payment, \$107.14 of which is a past due amount and a late payment charge. The tenants offered no explanation as to why they were only seeking to recover part of what was owing for that period. The invoice for October 27 – December 23 shows that the actual charges for that period were \$396.72 but that the tenants were on an equalized payment plan and were charged \$273.46, which is the amount identified as payable. The tenants claim \$674.40 for that period. I accept the tenants' undisputed testimony and find that the tenants are currently paying for hydro for all of the tenanted suites. While the tenants may be obligated to pay for hydro as a term of the tenancy agreement, I find that such a term is unconscionable. Section 6(3) of the Act provides that a term which is unconscionable is unenforceable. Section 3 of the Residential Tenancy Regulation 3 defines unconscionable as a term which is "oppressive or grossly unfair to one party." I find that requiring the tenants to pay for hydro for suites which they do not occupy is grossly unfair to the tenants and accordingly I find that this term of the tenancy agreement is unenforceable. I find that the tenants are entitled to recover what they have paid for hydro. Based on the invoices provided by the tenants, I

find that they paid \$471.14 for the period from August 21 – October 27 and that they paid \$273.46 for the period from October 27 – December 23. I grant the tenants an order for the sum of those two payments, \$744.46. The tenants are at liberty to make an application to recover any monies paid for hydro beyond December 23. The tenants are free to arrange to have the hydro billing account placed back in the name of the landlord.

[6] **Moving costs.** The tenants seek a payment of \$2,000.00 for the cost of moving as well as an award for the cost of a damage deposit and two month's rent in a new accommodation. The tenants advised that they feel that they are being forced to move by the landlord's actions and feel that the landlord should be required to subsidize the cost of their moving as well as rent for a period at a new unit. I can find no basis on which to make such an award. The tenants have not yet moved, have not yet secured new accommodation and although they anticipate losses, have not suffered any monetary losses yet. I find the tenants' claim to be premature and I dismiss the claim with leave to reapply.

[7] **Filing fee.** The tenants seek to recover the \$100.00 paid to bring this application. The tenants have enjoyed only partial success and had they not exaggerated their claims, they would have only had to pay a \$50.00 rather than a \$100.00 filing fee. I find that the tenants are entitled to recover the \$50.00 fee which would have been payable for a claim under \$5,000.00 and I award them \$50.00.

In summary, the tenants have been successful in the following claims:

Stove	\$ 200.00
Leaks	\$ 45.00
Refrigerator	\$ 350.00
Loss of quiet enjoyment	\$ 400.00
Hydro reimbursement	\$ 744.46
Filing fee	\$ 50.00
Total:	\$1,789.46

Conclusion

I find that the tenants have established a claim for \$1,789.46 and I grant the tenants an order under section 67 for \$1,789.46. This order may be filed in the Small Claims Court and enforced as an order of that Court. The tenants also have the option of deducting this sum from rent owed to the landlord.

The tenants may deduct \$25.00 from their rent for each month in which the landlord does not provide them with a working stove in compensation for the rental of a stove. The tenants may deduct \$100.00 from their rent each month in which the landlord does not provide them with a working refrigerator.

The landlord is ordered to repair the sink and the bathtub to prevent further leaking. These repairs must be completed no later than May 10.

As the landlord did not participate in the hearing to advance his claim, the claim is dismissed in its entirety. The notice to end tenancy is set aside and of no force or effect. As a result, the tenancy will continue

Dated: April 23, 2010
