

## **DECISION**

Dispute Codes      CNR, MNDC, OPR, MNR, FF

### Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and a monetary order and a cross-application by the landlords for an order of possession and a monetary order. Both parties participated in the conference call hearing.

At the hearing the parties agreed that the tenant vacated the rental unit at the end of March. The landlords withdrew their claim for an order of possession and the tenant withdrew her claim for an order setting aside the notice to end tenancy.

### Issues to be Decided

Is the tenant entitled to a monetary order as claimed?

Are the landlords entitled to a monetary order as claimed?

### Background, Evidence and Analysis

The parties agreed that the tenancy began in November 2009 and that the tenant was obligated to pay \$1,150.00 per month in rent.

I address the claims of the parties and my findings around each as follows.

[1] **Landlords' claim.** The parties agreed that the tenant failed to pay rent in the month of March despite residing in the rental unit during that month. I find that the landlords are entitled to recover \$1,150.00 in unpaid rent for that month and I award the landlord that sum. I further find that the landlords are entitled to recover the \$50.00 filing fee paid to bring their application and award the landlords \$50.00.

[2] **Tenant's claims.**

a. **Dishwasher.** The tenant seeks an award of \$150.00 which represents compensation for loss of use of the dishwasher at a rate of \$50.00 per month for 3 months. The facts surrounding this issue are not in dispute. Shortly after moving into the rental unit the tenant discovered that the top rack of the dishwasher could not be pulled out and that some of the wheels on the bottom rack were missing. The tenant reported the problem to the landlords who, a short time after the problem was reported, repaired the top rack and replaced several of the wheels on the bottom rack. The tenant began using the dishwasher and discovered that it left food particles on her dishes. The tenant complained to the landlords who advised that as the dishwasher was an older model, she would need to periodically run a "cleansing cycle" with vinegar. The tenant ran a cleansing cycle and the problem was resolved but resurfaced a few weeks later. The tenant did not wish to run the dishwasher empty and discontinued using it. I find that the parties contracted that the tenant would have a dishwasher available to her during the tenancy. I find that the landlords fulfilled their contractual obligation to provide an operable dishwasher and that required repairs were completed within a reasonable period after the time problems were reported. I find that the need to periodically run a cleansing cycle did not render the dishwasher inoperable but rather was a reasonable request to ensure that the dishwasher would continue to function properly, in the same way that an oven would require periodic cleaning in order to ensure that it did not create smoke while in use. For these reasons I dismiss the tenant's claim.

b. **Heating.** The tenant seeks an award of \$200.00 which represents compensation for 4 months in which she had to use an alternate source of heat in the master bedroom and a further \$100.00 in compensation for the month of November in which she had no direct source of heat in the master bedroom. The parties agreed that there was no localized source of heat in the master bedroom, but that baseboard heaters located outside the bedroom were the closest heat source. On November 29 the tenant wrote a letter of complaint to the landlords and in response, the landlords provided a portable

electric space heater. The tenant testified that she had to pay excessive electrical bills because of the space heater, that it deprived her of floor space in the master bedroom and that it required her to be hypervigilant to ensure that her young child did not go near the space heater. The landlords testified that when the tenant viewed the rental unit prior to entering into the tenancy agreement, they pointed to the electric baseboards and advised that the baseboards were the source of heat. The landlords further testified that after they brought the space heater to the tenant they received no further complaints and the tenant indicated that the heater was effective to heat the area. The tenant denied having been told that the electric baseboards were the source of heat in the master bedroom. I find that the landlords were contractually obligated to provide adequate heat to the living areas of the rental unit and I find that the heating in the master bedroom was inadequate prior to the provision of the electric space heater. Regardless of whether the tenant was aware prior to entering into the tenancy agreement that there was no direct source of heat in the master bedroom, I find that she could not reasonably have known that the electric baseboard heaters outside the master bedroom would fail to adequately heat the master bedroom. I accept that shortly after the tenancy began, the tenant advised the landlords of the need for resolution of the heating problem and find that the landlord did not respond in a timely manner to the tenant's complaints, having waited until December to bring a space heater. I find that \$100.00 will adequately compensate the tenant for the month in which she did not have a source of heat in the master bedroom and I award her that sum. I find that the tenant has not proven that she made further complaints to the landlords after having received the space heater and find that in the absence of further complaints, the landlords could reasonably have assumed that the matter had been resolved. I therefore dismiss the tenant's claim for a further award of \$200.00.

- c. **Electrical outlets.** The tenant seeks an award of \$200.00 which represents compensation for 4 months in which she had to tolerate what she described

as unsafe and unusable electrical outlets. The tenant testified that many of the electrical outlets in the unit would not hold the plugs to her electrical appliances, allowing the plugs to slip out of the sockets. The tenant further testified that on one side of the kitchen, the electrical outlet provided sufficient power to charge her cell phone, but could not produce enough voltage to operate her toaster or popcorn maker. The tenant provided a photograph showing that the plug for her telephone was taped to the outlet to secure it in place. The tenant further testified that she observed some of the outlets sparking. The landlords testified that in response to the tenant's complaints they tested the electrical sockets and found that they were all in working order. The landlords further testified that they observed no sparking. The landlords claimed that they told the tenant that for several of the sockets which were worn, she may find that her plugs would securely fit in the sockets if the prongs were spread slightly. The tenant denied having been given such advice but argued that adjusting the prongs on the plugs would be unsafe. The landlords gave evidence that in December, an electrical inspected the home after having installed a new breaker and advised the landlords that the outlets were in working condition. I accept that some of the plugs in the rental unit were sufficiently worn that they were unable to secure the plugs which were inserted. However, I am unable to find that the outlets were unsafe or that the tenant suffered any compensable loss for the wear on the outlets. I find that the tenant has failed to prove that any of the outlets were not functioning during the tenancy. The tenant's claim is dismissed.

- d. **Loss resulting from leak.** The tenant seeks an award of \$100.00 which represents compensation for 1 month in which she claims she was unable to use a crawl space for storage or to use a bathroom on the lower floor of the rental unit. The tenant seeks a further award of \$1,138.56 as the value of items which she claims were water damaged. The parties agreed that in mid-January there was a leak in the tap of the sink in the downstairs bathroom. The landlords repaired the leak two days after the incident. The parties further agreed that in mid-February the tenant advised the landlord that the

tap was again leaking and that water had leaked into the crawl space below the bathroom, affecting items she had stored there. The landlords discovered that the water line had what they described as a steady, significant leak. The landlords repaired the leak the same day and dried the crawl space with towels. The tenant removed her belongings from the crawl space and discovered that a number of items had been severely damaged by water and had to be discarded. The tenant testified that she rented a storage space to store her belongings for the remaining month of the tenancy and further testified that she did not continue use the crawl space because she was not confident that her belongings would not be further damaged. The tenant claimed that after the leak, the lower bathroom had an unpleasant odour so she did not use that bathroom for the remainder of the tenancy. In order to prove her claim, the tenant must prove that the landlords' negligence or failure to comply with their contractual obligations led to the damage to her goods and loss of the areas in question. Leaks in plumbing fixtures are not uncommon and I find no evidence that the landlords' negligence led to the leak in question. The landlords acted quickly to repair the leak and clean the areas affected by the water. The landlords are not the tenant's insurer and absent fault on their part, cannot be held liable for loss flowing from the leak. I am not satisfied that the tenant brought the odour of the bathroom to the landlords' attention and therefore find that the landlords did not have opportunity to address the problem. The tenant's claim is dismissed.

- e. **Cleaning.** The tenant seeks an award of \$120.00 which represents 6 hours of cleaning at a rate of \$20.00 per hour. The tenant testified that when she moved into the rental unit, it had not been sufficiently cleaned by the previous tenants and that she had to perform significant cleaning. The landlords claimed that the tenant never brought the cleaning issue to their attention at the beginning of the tenancy and provided photographs of the rental unit taken before the tenant moved in to show the condition of the unit at that time. I find that the tenant has not proven that the rental unit required cleaning at the beginning of the tenancy. She provided no corroborating evidence, there

is no indication that she made a complaint to the landlords and the photographic evidence of the landlords refutes her claim. For these reasons the claim is dismissed.

- f. **Moving costs.** The tenant seeks an award of \$250.00 for the cost of moving and arranging for utility service at her new residence. The tenant testified that she had explained to the landlords that she wanted a long-term tenancy and that their failure to fulfill their contractual obligations caused her to move much sooner than she would have liked to. The landlords testified that they addressed her concerns within a timely manner as they arose and pointed out that the tenancy was a month-to-month tenancy, not a fixed term for a significant length of time. I find no indication that the landlords significantly breached their contractual obligation to the tenant. Although the tenant suffered a lack of heat in the master bedroom for one month, this in my view is not sufficient to establish the tenant's claim. The claim is therefore dismissed.
- g. **Filing fee.** The tenant seeks to recover the \$50.00 paid to bring this application. The tenant has been only partially successful in her claim and I find it appropriate to award her part of the filing fee. I award her \$10.00.

### Conclusion

The landlords have been awarded a total of \$1,200.00 and the tenant has been awarded a total of \$110.00. I find it appropriate to set off the awards as against each other, leaving a balance of \$1,090.00 payable from the tenant to the landlords. I grant the landlords an order under section 67 for \$1,090.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: April 21, 2010

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