

## **DECISION**

Dispute Codes      CNR, MNDC, MT, OLC, O, PSF, RP, FF

### Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking orders to allow more time to file the Application to dispute a Notice to End Tenancy for unpaid rent, to dispute an additional rent increase, cancel a Notice to End Tenancy for unpaid rent, to receive compensation under the Act or tenancy agreement, to have the Landlord comply with the Act, to have the Landlord make repairs to the rental unit, to provide services or facilities required by law, to allow the Tenant to reduce rent for repairs or services agreed upon but not provided and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that prior to the hearing the Tenant paid the Landlord the amount due under the Notice to End Tenancy for unpaid rent within the required five days, therefore, it was not necessary to deal with the portions of the claim requesting more time to file the Application to dispute a Notice to End Tenancy for unpaid rent, or to cancel the Notice to End Tenancy for unpaid rent.

### Issues(s) to be Decided

Has the Landlord complied with the Act in order to increase the rent paid by the Tenant?

Should the Landlord be ordered to comply with the Act and to make repairs to the rental unit, or provide other services or facilities to the Tenant?

Is the Tenant entitled to monetary compensation?

Is the Tenant entitled to reduce the rent?

### Background and Evidence

The parties signed a short, self prepared, tenancy agreement on September 15, 2003. The monthly rent was set at \$1,200.00 per month, payable on the first day of the month, and the Tenant paid the Landlord a security deposit of \$600.00 on September 15, 2003.

The Tenant argues there was a verbal agreement with the Landlord at the outset of the tenancy that the rent would not be raised for ten years.

In April of 2008, the Landlord discussed a rent increase of \$150.00 per month with the Tenant. The Tenant argued he could not afford this amount, so the Landlord increased the rent by \$50.00 a month, effective the next month. The parties agree that this arrangement was made verbally.

In the fall of 2009, the Landlord again wanted to increase the rent by another \$50.00. The Tenant explained to the Landlord that the *Residential Tenancy Act* (the "Act") required rent increases to be in writing, and are limited to the allowable increase set by the regulation and Residential Tenancy Branch. The Landlord provided the Tenant with a written Notice of the increase, however, they increased the rent by a percentage based on the previous verbal increase.

The Tenant also claims that the Landlord would not make repairs to the rental unit and appliances. The Tenant testified that on November 2, 2009, he gave the Landlord his November rent cheque and verbally informed her that the laundry washing machine was not working, and claims it was not repaired for four weeks and requests compensation for costs of outside laundry facilities. The Tenant also claims the doorbell, ceiling fans in two bedrooms, and an exhaust fan in the bathroom of the master bedroom are not functioning. The Tenant claims he has verbally informed the Landlord about these repairs several times.

The Tenant is also requesting that the Landlord be ordered to evict the renters in the rental unit in the basement suite of the subject property. He complains that these renters are too noisy and are causing disturbances. He also testified that they smoke inside the rental unit, contrary to the non-smoking policy he says he has with the Landlord, which is a verbal agreement.

The Landlord argues that there was no agreement not to raise the rent for ten years.

The Landlord argues the Tenant verbally agreed to the rent increase and paid it for several months. The Landlord became informed about the process of increasing the

rent and used the proper form for the second rent increase, although admits that the increase was based on the first verbal increase.

The Landlord denies that the Tenant ever told her about a broken exhaust fan in the bathroom of the master bedroom. The Landlord denies the Tenant told her about the other items that required fixing. The Landlord says that the washer was fixed within two weeks of the Tenant notifying her it was broken. In her written evidence the Landlord makes statements such as,

“The laundry machine was provided to him and therefore it was his responsibility to fix it if anything were to happen to it because he was the only person who was using it”, and

“... when he rented out the place he was told that if anything was to happen to anything it would be his responsibility to fix it.” [Reproduced as written.]

The Landlord agrees that there is a problem with the renters who live below the Tenant, although they have made mistakes in trying to evict these renters.

### Analysis

Based on the foregoing, the evidence and testimony, and on a balance of probabilities, I find that the Landlord has breached the Act, and the Tenant has suffered losses to the Landlord's breaches.

The Landlord is required to follow sections 40, 41, 42 and 43 in the Act when increasing the rent. The amount of the allowable rent increase is established each year and published by the Residential Tenancy Branch. The Landlord must use the approved form, which includes a calculation of the allowable rent increase based on the allowable rent increase. The Notice of Rent Increase form must be served on the Tenant at least three months before the increase is to take effect. Without using the rent increase provisions of the Act, the Landlord can only increase the rent if the Tenant agrees to the increase in writing. This did not happen here and therefore, the rent increases were illegal and the Tenant is allowed to recover the increased rent paid. I also order that the rate of rent for the rental unit is \$1,200.00, until increased in accordance with the Act. Therefore, the Tenant is entitled to the return of 23 months of the \$50.00 rent increase paid, in the amount of \$1,150.00. I also order the Landlord to repay the Tenant his filing fee of \$50.00, and therefore **the Tenant may deduct the sum of \$1,200.00 from one month of rent.**

There is insufficient evidence for me to find that the Landlord promised the Tenant not to raise the rent for ten years, and therefore, this portion of the claim is dismissed.

The Landlord is required by section 32 of the Act to provide and maintain the rental unit in a state of decoration and repair that complies with health safety and housing standards as required by law. This means the Landlord may not shift the responsibility for maintenance and repairs to the Tenant. However, if the Tenant breaks something he is required to repair this himself.

In the case of the laundry machine, this was the Landlord's responsibility to repair, unless there was proof the Tenant was negligent and broke the machine himself. I find this is not the case here. The pump on the washer simply gave out, likely due to the age of the machine. Simple use of an item does not mean the user must pay for the repairs. Furthermore, when the Tenant rented the unit it came with a washing machine, and therefore, the Landlord has provided a service or facility which may not be taken away without compensation to the Tenant.

Nevertheless, the Tenant has a responsibility under the Act as well, to notify the Landlord in writing when repairs or maintenance are required, or even if he is being disturbed by other occupants. Here, the Tenant did not inform the Landlord in writing and therefore, I make no monetary orders with regard to the losses the Tenant suffered because of loss of use of the washing machine, or the other repairs requested, or for loss of quiet enjoyment.

I find that the Landlord is now aware of the repairs required in the rental unit. I order the Landlord to make the following repairs:

- a. Repair or replace exhaust fan in master bedroom;
- b. Repair or replace ceiling fans in bedrooms; and
- c. Repair or replace the door bell for the rental unit.

The above repairs must be completed by May 21, 2010, or the Tenant may file another Application for Dispute Resolution for compensation for loss of use of these items.

While I am unable to order the Landlord to evict the problem renters in the basement, I do note that the Tenant is entitled to quiet enjoyment of the rental unit, under section 28 of the Act. If the renters below continue to make noise and disturb the Tenant and the Landlord takes no steps to protect this right, then the Tenant may make another Application for Dispute Resolution for compensation for loss of quiet enjoyment.

Likewise, the Landlord must enforce the non-smoking policy established by the tenancy agreement with the other renters who smoke, or the Tenant may again apply for compensation.

Lastly, I have enclosed copies of a guidebook to the Residential Tenancy Act for both parties, and I encourage them to learn about their respective rights and obligations under the Act.

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: April 21, 2010.

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Dispute Resolution Officer