

AMENDED DECISION

Dispute Codes CNR, MNDC, OLC, RP, RR, FF

Introduction

This hearing was convened by way of conference call to deal with the tenants' application to cancel a notice to end tenancy for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order that the landlord make repairs to the unit, site or property; for an order allowing a tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application. The parties gave affirmed evidence, and were given the opportunity to cross examine each other on their evidence.

Issues(s) to be Decided

- Are the tenants entitled to an order cancelling the notice to end tenancy for unpaid rent or utilities?
- Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Are the tenants entitled to an order that the landlord comply with the *Act*, regulation or tenancy agreement?
- Are the tenants entitled to an order that the landlord make repairs to the unit, site or property?
- Are the tenants entitled to an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

This month-to-month tenancy began on August 1, 2007 and the tenants still reside in the rental house. The tenant testified that she lives in the back side of the house, and

her mother resides in the front unit of the house. Combined, the tenants pay rent in the amount of \$1,600.00. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$650.00.

The tenant testified that the tenants were paying rent in the amount of \$1,400.00 until March 1, 2009 when it was raised to \$1,600.00. The landlord notified the tenants in November, 2008, and the tenants verbally agreed to the increase. At that time, the tenants paid their rents separately, being \$650.00 and \$750.00 per month however the landlord only issued receipts for one tenant, but not the other. The tenant stated that commencing June, 2009 the tenants put the rent together and submitted a joint payment for the 2 suites.

The tenant further testified that in February, 2010 she spoke to the landlord who agreed that rent would be reduced to \$1,400.00 for the month of April, 2010 if the roof wasn't fixed by the end of February, and the tenants paid \$1,400.00 for the month of April. The tenant was required to live with a tarp over the roof of her suite which covered the windows for almost 5 months due to a leak in the roof, which the landlord was to repair. On April 1, 2010 she sent a letter to the landlord by registered mail requesting those repairs and 8 others, a copy of which was provided as evidence. However, she received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in her mail box on April 7, 2010 along with some newspaper clippings of rentals available in the area.

The tenant is requesting an order for a \$200.00 refund for the rental increase paid from March 1, 2009 to date, as well as one month free rent for compensation for loss of enjoyment of the rental property as she was not able to see out of her windows and was continuously awakened by the tarp blowing in the room. She also stated that the roof was leaking in the corner of her living room and wood bugs live in corners of the walls. She testified that shingles were dropped off and remained on her patio for about a month – firstly in the front yard, then they were moved to the back yard. The roof had been repaired by May 14, 2010.

She also hears scratching and running noises, and had asked the landlord to try to find what was making the noises because about 3 years ago she found a baby rat in her

kitchen. The landlord looked in the crawl space and found nothing, so did nothing more. The tenant called an exterminator who found rat droppings near the washer and dryer and recommended in writing that the landlord cut back bushes around the unit, which he did. The tenant produced a receipt for \$131.25 for the exterminator as well as a written report which contains numerous recommendations.

The tenant testified that she had asked for repairs for 6 months to a year, but the repairs were not done. Those repairs include siding, which was never replaced and contains spaces for rodents to access the inside of the residence. The tenant's friend put up the paper; all that was in place before that was insulation and clear plastic.

The tenant also testified that after she gave to the landlord the letter on April 1, 2010 she started to receive harassing telephone messages from the landlord and his girlfriend. She received a voice message from the landlord's girlfriend on April 6, 2010 saying that the landlord had received the letter dated April 1, 2010 and now the rent will increase to \$1,800.00 per month. The tenant did not respond to the message, but when she arrived home from work the following day, she found the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was received in advance of this hearing. She further testified that 3 additional messages were left on her voice mail telling the tenants they have to move out, and that the landlord would pay \$3,000.00. Two more messages were left on April 13, 2010. When asked why she paid the increase from \$1,400.00 to \$1,600.00, she stated that the landlord and his girlfriend hounded her and told her she'd have to move out. The tenant provided taped copies of the messages as evidence in advance of the hearing. The tenant also disputes the method of service of the 10 Day Notice, which shows that it was served in person however the tenant testified that she found it in her mailbox.

The tenant is also requesting an order that the landlord make repairs to the soft floor in the bathroom, to finish the siding by the French doors at the side of the house, to check the heater to find out why the grill is discolouring, to fix the toilet so that a person doesn't have to hold the handle down until the toilet is finished flushing, to fix the drain pipe by the bedroom window, and to get an exterminator to get rid of the bug problems.

She stated that he has looked at her issues, but doesn't resource and therefore does not fix the problems.

The landlord testified that he had 2 electricians look at the heater about a year ago and nothing was wrong with it; he does not know why the grill is discolouring. He further testified that the gutters were done at the back of the house today. He stated that the shingles were not put on the roof right away because of the weather, and that the siding was ordered last Friday.

The landlord further testified that the parties had had a discussion about the bathroom floor, and he is waiting for the tenant to tell him when he can get that work done. He also put rat poison in the attic, in the crawl space and in the laundry room which is not yet touched by rodents. The poison was placed there a couple of years ago, and he left it there.

Analysis

Firstly, dealing with the rental increase on March 1, 2009, the *Residential Tenancy Act* states as follows:

- 43** (1) A landlord may impose a rent increase only up to the amount
- (a) calculated in accordance with the regulations,
 - (b) ordered by the director on an application under subsection (3), or
 - (c) agreed to by the tenant in writing.

I find that the tenants did not agree to the rent increase on March 1, 2009 in writing, and therefore, the landlord is not entitled to collect the higher amount. For that reason, I find that the tenants' application for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is justified.

With respect to the tenants' application to reduce the rent for repairs, services or facilities agreed upon but not provided, I find that the landlord was notified in writing about the issues that he was obligated to correct or repair, and has not done so within a

reasonable time. Section 32 of the *Residential Tenancy Act* supports the tenants' application:

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 tenant.

It's clear from the evidence of the parties that the landlord agrees that the repairs are required. The landlord testified that the tarp on the roof is now gone because the roof has been repaired, however I find that 5 months exceeds a reasonable time for such repairs to remain undone. He also stated that the gutters are being done today, and siding was ordered last Friday. It seems that the repairs have been dealt with as a result of the actions of the tenants in filing for dispute resolution.

I further find that the parties did enter into an agreement that the rent amount would be reduced if the roof repairs were not completed and therefore I find that the notice to end the tenancy should be cancelled and the rent should be reduced for those repairs.

Conclusion

The Notice to End Tenancy is hereby cancelled.

I further order that the landlord comply with the *Act* as it relates to rental increases. I further order that the tenants pay rent in the combined amount of \$1,400.00 per month until such time as the landlord gives the required notice of a rental increase in the proper amount, as per the *Act* and the regulations.

I further order that the tenants recover from the landlord the sum of \$2,600.00 in rental overpayments from March 1, 2009 to March 31, 2010 and \$500.00 for failing to complete repairs within a reasonable time.

I further order that the tenants recover from the landlord the amount of \$131.25 for the cost of the exterminator.

I further order that the landlord complete the following repairs:

- correct the problem of the soft floor in the bathroom;
- complete the siding at the side of the house and near the French doors;
- repair the handle on the toilet;
- repair the gutters;
- hire the services of an exterminator to eliminate the bug/rodent problem;
- hire the services of a professional electrician to repair the heater, or provide the tenants with their written opinion of the cause of the discoloration on the vent.

The tenants will have a reduced rent commencing July 1, 2010 in the amount of \$100.00 per month from the rental amount of \$1,400.00 per month for each month that the repairs remain incomplete unless the repairs are completed before the end of June, 2010, in which case, the rental amount will be \$1,400.00 per month.

The tenant will also recover from the landlord the amount of \$50.00 for the cost of this application.

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: May 31, 2010.

Dispute Resolution Officer