

## **DECISION**

Dispute Codes      CNC, MNDC, FF

### Introduction

This hearing dealt with the tenants' application to cancel a Notice to End Tenancy for Cause, for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement and recovery of the filing fee. The landlord did not appear at the hearing. One tenant appeared and testified that the landlord was notified of this hearing by registered mail sent on March 23, 2010. The tenant provided a copy of the registered mail receipt and testified that she was present when the landlord picked up the registered mail. The tenant provided the landlord with a copy of the amended application and the tenant's evidence by leaving copies of the documents in the landlord's mailbox on April 24, 2010 and by personal service on May 1, 2010. Based upon the evidence before me, I was satisfied the tenant served the landlord with the hearing documents in a manner that complies with the Act and I proceeded to hear from the tenant without the landlord present.

Part of the tenants' monetary claim related to overpayment of utilities. The tenant requested that portion of the claim be withdrawn with the ability to reapply at a later date. The tenant's request was granted and the remainder of this decision pertains only to the Notice to End Tenancy and the tenants' request for compensation for repairs made to the rental property. With this decision I make no findings or fact with respect to the tenant's application for overpaid utilities or any determination as to the portion of utilities payable by the tenants.

### Issues(s) to be Decided

1. Has the landlord established grounds to end the tenancy for cause?
2. Should the Notice to End Tenancy be cancelled?
3. Are the tenants entitled to compensation for expenditures they incurred to repair the property?

### Background and Evidence

The tenant testified as follows. The month to month tenancy commenced September 1, 2008; however, they were permitted occupancy of the rental unit a few days early. The tenants are required to pay rent of \$800.00 on the 1<sup>st</sup> day of every month. There was no written tenancy agreement or move-in inspection report prepared by the landlord. The landlord and tenants viewed the rental unit prior to the commencement of the tenancy at which time the tenants pointed out certain repairs that were necessary and the landlord promised to fix the items. When the tenants moved in most of the repair issues had not been addressed. When the tenants requested repairs be made the landlord told the tenants to make the repairs themselves. The tenants agreed to make repairs and provide the landlord with the receipts and the landlord agreed to compensate the tenants for their expenditures at the end of the tenancy.

By way of the amended application and evidence, the tenants are seeking recovery of the following expenditures:

Supplies to fix bathroom floor, door & sealing walls	\$ 51.61
Supply screen door	<u>50.00</u>
Total claim for repairs made by tenants	\$ 101.61

The tenant explained that the above claim relates to supply of materials only and does not include labour, which was supplied at no charge. The tenant provided receipts dated August 23 and 25, 2008 and a picture of the screen door.

The tenant submitted evidence that the landlord served the tenants with a *1 Month Notice to End Tenancy for Cause* (the Notice) on March 15, 2010. The Notice has an effective date of April 30, 2010 and indicates the reason for ending the tenancy is because the tenants significantly interfered with or unreasonably disturbed another occupant or the landlord. The tenant submitted that the landlord had verbally told the tenants he wished to end the tenancy because the landlord wanted to move to Alberta. The tenant also explained that several agents have been in the rental unit to view the house as it was for sale. The tenants were shocked to discover the Notice served upon them was for cause.

Other evidence included in the tenants' evidence package are photographs of the rental unit, a copy of a letter from the tenants to the landlord dated January 2, 2010 whereby the tenant requested certain repairs be made and receipts showing expenditures incurred by the tenants. The landlord did not supply any written submission or evidence for this hearing.

### Analysis

Where a tenant receives a *1 Month Notice to End Tenancy for Cause*, the tenant has the right to dispute the Notice within 10 days of receiving the Notice. Where a tenant disputes a Notice, it is upon the landlord to show that there were sufficient grounds to end the tenancy for the reasons indicated on the Notice. Since the landlord did not appear at the hearing and did make any submission to indicate the basis for issuing the Notice, I do not find sufficient grounds for ending the tenancy and I cancel the Notice. Accordingly, the tenancy shall continue until such time it legally ends.

With respect to the repairs made by the tenants, I find the undisputed evidence satisfies me that the tenants made repairs to the property at their own expense and that the landlord had agreed to compensate the tenants for these repairs by the end of the tenancy. However, since the tenants have expended these amounts several months ago, I find it unconscionable to make the tenants wait to the end of tenancy to receive compensation. Therefore, I find the tenants should be compensated for the repairs they made by deducting the approved claim of \$101.61 from the next month's rent payable.

I also find the tenants entitled to recover the \$50.00 filing fee paid for this application as the landlord did not establish a basis for issuing a Notice to End Tenancy for Cause.

In light of the above findings, the tenants are hereby authorized to deduct a total of \$151.61 from a subsequent month's rent in satisfaction of the awards I have granted to the tenants with this decision.

### Conclusion

The Notice to End Tenancy for Cause has been cancelled with the effect that this tenancy continues. The tenants have established an entitlement to deduct \$151.61 from a subsequent month's rent in satisfaction of this claim. The tenants retain the right to make a subsequent application with respect to utilities payable by the tenants and any overpayment of utilities by the tenants.

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 11, 2010.

---

Dispute Resolution Officer