

DECISION

Dispute Codes

Tenants: CNC, MNDC, OLC, ERP, RP, FF, O
Landlord: OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with cross applications by the landlord and the tenants. The tenants filed their application on May 10, 2010 for an order cancelling a notice to end tenancy for cause, 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 that the landlord make emergency repairs for health or safety reasons and to recover the filing fee from the landlord for the cost of this application.

The landlord filed an application on May 11, 2010 requesting an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenants for the cost of this application.

Three of the four tenants appeared at the conference call hearing. The attending parties gave affirmed evidence, and the parties were given the opportunity to cross examine each other on their evidence.

At the outset of the hearing, the landlord advised that the tenants vacated the unit on or about May 31, 2010 and therefore the application for an Order of Possession is withdrawn. Similarly, the application of the tenants for an order cancelling the notice to end tenancy, as well as the application for an order that the landlord comply with the *Act*, regulation or tenancy agreement, the application that the landlord make repairs to the unit, site or property, and the application for an order that the landlord make emergency repairs for health or safety reasons, are hereby dismissed.

Issues(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord's application to retain the pet damage deposit or security deposit justified?

Background and Evidence

This month-to-month tenancy began on different dates for each of the four tenants. The first tenant moved into the unit on April 1, 2009, and the latest tenant moved in on March 1, 2010. Rent in the amount of \$450.00 is payable by each tenant in advance on the 1st day of each month, and the tenants also pay for hydro and natural gas. The landlord collected a security deposit from each tenant in the amount of \$200.00 at the beginning of their respective tenancies. The rental unit is a house with 4 bedrooms.

The landlord testified that none of the four tenants paid any rent for the month of May, 2010. She further testified that utilities are outstanding and provided copies of those bills in advance of the hearing. The first of which is a BC Hydro bill in the amount of \$226.20 which covers the period of February 11 to April 9, 2010. Another BC Hydro bill was provided in the amount of \$179.30 which covers the period April 10 to May 31.

Two Terasen Gas bills were provided, one being \$103.38 covering March 10 to April 9, 2010 and one for \$43.24 covering April 9 to May 10, 2010. A new bill has also been received from Terasen Gas in the amount of \$51.94 for May 10 to May 31, 2010, which includes the previous bill of \$43.24. The landlord sent an email to the tenants on April 27, 2010 requesting payment of the bills for the month of May, and provided a copy of the email in advance of the hearing.

The tenants testified that throughout the tenancy the landlords have failed to do repairs and emergency repairs, which have devalued the tenancy. The tenants stated that the counter leaks because the caulking is worn out and is severely leaking onto the floor

causing mould under the tiles. They stated that the hole for the faucet is too big, and they told the landlord about it repeatedly. Further, they stated that they have been living with a faulty electrical system; the stove shocks them when they touch it, and they couldn't use the stove for 2 months. One of the tenants testified that he spoke with an electrician who stated that the house likely wasn't grounded. They said the landlord's response was that she is not the landlord; she is renting the building from a management company and is renting to other tenants. The tenants further testified that the landlord did not provide them with any emergency contact numbers. They stated that one of the tenants bought a stove from Craig's List which started to shock them as well. The tenants did not get shocks from touching electrical outlets. One of the tenants, who represented the others with his evidence and submissions, testified that he suffers from extreme anxiety, and due to living with the fear of being injured by the faulty electrical, the tenants are claiming 2 months' rent for residing in a dangerous environment with the knowledge of the landlord.

The tenants also pointed out a pest control service report provided in advance of the hearing, which the tenants feel proves the landlord's failure to deal with issues. That report shows that previous pest problems had existed and recommends eliminating some points of entry for rodents. The report is dated June 24, 2009. Although the report speaks to previous pest problems, no current pests are noted in the report. The tenants have provided a copy of an email sent to the landlord which indicates that squirrels are running around in the attic.

The landlord testified that she had been leasing from a property company and in 2007 she moved out and the tenants she was living with asked her to keep the lease in her name, which she did. People moved in and out and she eventually sub-leased to these tenants, and they knew she was not the owner.

She further testified that the owner had sent an electrician to the residence on January 11, 2010 and provided a copy of a letter dated February 8, 2010 to herself from the management company that owns the building which states that the electrician found the electrical circuits were overloaded causing fuses to blow, and the electrician had

replaced 10 blown fuses with correct size fuses. She also stated that she called the electrician on January 12, 2010 and was told that the fuses were not the correct ampage, being lower than required, so they were prone to being overloaded. There were no other electrical issues, and the tenants have not provided any evidence that the house is not grounded. She stated she spoke to an electrician who said it's almost impossible that the house isn't grounded, and the first she's heard about shocks from the stove is since the tenant bought the stove from Craig's List in March or April, 2010. She also testified that one of the tenants told her the stove was working fine toward the end of April.

The landlord further stated that she went to the residence on November 23, 2009 and replaced the caulking. During the week of January 25, 2010 the management company did the same, and it's now been done twice. The move-out condition inspection shows it is still fine.

Analysis

Firstly, dealing with the landlord's claim for unpaid rent and utilities, the *Residential Tenancy Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenants did not have any right under the *Act* or the tenancy agreement to deduct any portion of the rent. Therefore, the landlord is entitled to a monetary order in the amount of \$1,800.00. I also find that the tenants are responsible for the utilities and the landlord is therefore entitled to an additional monetary order in the amount of \$560.91.

The tenants testified that their tenancy has been devalued by the pest issue and the electrical issue. I have no evidence before me that the pest issue has caused any devaluation of the tenancy.

With respect to the faulty electrical system, I have the evidence of the landlord that an electrician visited the unit and prepared a report to the owner. The owner passed on a letter to the landlord indicating that the circuits had been overloaded and the fuses had been changed to the correct ampage. I also have the evidence of the landlord that one of the tenants told her that the stove was working fine toward the end of April, and that the first she had received complaints about shocks was after the tenant bought a used stove. The tenants claim that the electrician that attended in November, 2009 did not likely look at the grounding issue, but only at the fuses and the fuse box. The landlord stated that the electrician would have picked up on it if it had been a grounding issue. I find that neither the landlord nor the tenants are electricians and are all guessing.

In order to be successful with a damage claim, the claiming party must provide sufficient evidence to support that the tenancy was devalued by the actions or inactions of the landlord. In the circumstances, I find that the landlord ought to have dealt with the electrical issue as being a safety issue. However, I do not agree with the tenants that their tenancy has been devalued by 2 full months' rent.

Conclusion

As for the monetary order, I find that the landlord has established a claim for \$2,360.91 in unpaid rent and utilities.

I further find that the tenants are entitled to a monetary order in the amount of \$50.00 each, for a total of \$200.00.

Since both the landlord and the tenants have been partially successful with their claim, I decline to award the cost of the filing fee for this application to either party.

I order that the landlord retain the deposit and interest of \$800.00 in partial satisfaction of the landlord's claim and I grant the landlord an order under section 67 for the balance due of \$1,360.91. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: July 13, 2010.

Dispute Resolution Officer