



# **Dispute Resolution Services**

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **Decision**

### **Dispute Codes:**

CNR

MNDC

FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel Ten-Day Notice to End Tenancy for Unpaid Rent dated June 7, 2010 and June 9, 2010 and purporting to be effective June 18, 2010 or June 30, 2010. The tenant's application also requested: a monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement for the cost of repairing the lawnmower, the cost of placing stop-payments on cheques that the landlord claimed not to have received and compensation for loss of value of the tenancy due to harassment by the landlord.

Both the landlord and the tenant appeared and each gave testimony in turn.

### **Issue(s) to be Decided**

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord's issuance of the Ten-Day Notice to End Tenancy for Unpaid Rent should be cancelled

- Whether the tenant is entitled to monetary compensation under section 67 of the Act for damages or loss. This determination is dependant upon whether the claimant presented proof:
  - Of the existence and monetary value of the damage or loss
  - That the cause of the damage or loss was the respondent's actions in violation of the Act or the tenancy agreement

The burden of proof is on the landlord/respondent to justify the reason for the Ten-Day Notice. The burden of proof is on the applicant to prove the remainder of the claims and requests contained in the tenant's application..

### **Background and Evidence**

The tenancy began on September 1, 2008 as a two-year fixed term with rent due on the first day of each month of \$2,300.00, subsequently lowered to \$1,800.00 per month by agreement. The tenant had paid a deposit of \$1,150.00.

Submitted into evidence by the applicant/tenant in support the application was, a copy of the Ten-Day Notices and verification of payment by June 11, 2010. The landlord acknowledged that payment was received. Therefore I find that the Ten-Day Notice was no longer an issue under dispute as it has been cancelled pursuant to section 46(4)(a).

The tenant testified that the landlord had initially attempted to impose an end to the tenancy based on the expiry of the fixed term under the tenancy agreement in a communication dated June 1, 2010. The tenant testified that she did not agree that she was required to move out at the end of the fixed term and therefore the agreement would automatically convert to month-to-month under the Act. A copy of the communication and the tenant's written response were in evidence.

The tenant testified that the rent for June 2010 was mailed to the landlord on May 24, 2010 but when she received a communication from the landlord on June 2, 2010 that

the rent was not received, it was necessary to place a stop payment on the cheque at a cost of \$12.50 and the tenant reissued a replacement cheque sent on June 4, 2010.

The tenant testified that when she received a Ten-Day Notice for unpaid rent dated June 7, 2010 she felt it would be best deposit her rent payment directly into the landlord's bank account, which was done on June 11, 2010. The tenant testified that it was necessary for her to place a stop payment on the second cheque. The tenant stated that she suspected that the landlord was attempting to devise a means by which to end the tenancy. The tenant seeks reimbursement of \$25.00 for bank charges.

The landlord disputed that there was any need for the tenant to put stop payments on the cheques and stated that, at no time did the tenant ever advise that this had been done. The landlord stated that this was discovered when he attempted to cash the cheque. The landlord denied ever receiving the second cheque and stated that the first cheque was, in fact, mailed on June 1, 2010 as confirmed by the postal stamp on the envelope he had submitted into evidence.

The tenant testified that when the tenancy began, the landlord was supposed to supply a lawnmower for the tenant's use, but did not do so. The tenant testified that she utilized her own equipment and when it broke down she requested that the landlord pay for the repairs. The tenant testified that the landlord initially agreed to pay up to \$140.00 but later consented to pay the entire cost of the estimate from the repair shop for \$205.00. Copies of these communications were submitted into evidence.

The landlord testified that when the landlord consented to pay the repair costs for the mower, this was done under the belief that the charges were only \$45.00, not \$205.00 as shown on the estimate placed in evidence by the tenant. The landlord testified that he had never seen the \$205.00 but paid the \$45.00 and did not expect to be billed for any additional costs being claimed. The landlord pointed out that in his communication to the tenant on this subject, he had stated that if the repair exceeded \$140.00 he would prefer to buy a new mower, which would subsequently become the landlord's property.

The tenant testified that she was also seeking compensation from the landlord for loss of quiet enjoyment and devalued tenancy due to the conduct of the landlord. The tenant stated that issuing repeated Notices to End Tenancy in an effort to terminate the tenancy despite the fact that rent was paid, amounted to harassment. The tenant also took issue with the fact that because the house was for sale, the tenant was repeatedly disturbed by showings and this affected her business and caused stress for her pets. The tenant testified that 24 hours written notice was not given before each showing, but she cooperated with the realtor. However, the disruption had caused financial and emotional difficulty. The tenant stated that throughout the tenancy the landlord has improperly delegated responsibilities onto the tenant such as arranging repairs. The tenant stated that the landlord continuously vacillated on commitments made such as the payment of water utilities, reimbursing for paint, compensating for the cost of tree removal and other maintenance or repairs. The tenant testified that the landlord has suddenly stated that her email messages will no longer be accepted. The tenant testified that the landlord also made a bizarre inquiry about a missing box of letters of which the tenant had no knowledge. The tenant testified that the landlord refused to compensate the tenant for being forced to arrange the refitting new locks on all five doors due to the landlord's failure to provide a working key from the start of the tenancy. The tenant's position was that all of the above conduct served to devalue her tenancy warranting compensation of \$500.00.

The landlord denied that there was any attempt to wrongfully evict or harass the tenant. The landlord pointed out that during the tenancy there had always been a timely response to the tenant's requests. The landlord testified that the tenant was reimbursed for the paint, the tree service and even one of the showings of the home to perspective buyers. The landlord stated that the tenant was required under the tenancy agreement to pay for water utilities, but has never paid and had violated the Act by changing the locks without giving the landlord a key. The landlord gave additional testimony on matters that were not relevant relating to late repeated payment of rent, damage to the carpet and yard maintenance.

### Analysis

The tenant was requesting monetary compensation in the amount of \$935.00 of which \$200.00 has been paid. However, the tenant feels that she is still owed \$160.00 for the lawnmower repair, \$25.00 cost of the stop payments and compensation for loss of value to the tenancy.

In regards to an Applicant's right to claim damages from the another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant has a burden of proof to establish that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7 and the evidence furnished by the applicant must satisfy each component of the test below:

#### Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the tenant to prove the damages.

In regards to the cost for the stop payments, I find that the tenant has proven that her action in cancelling and reissuing the first cheque, in response to the landlord's claim not to have received it, was warranted. I also find that the tenant's actions in cancelling the second cheque in order to put funds directly into the landlord's account so that she could meet the five-day deadline to cancel the Notice was also necessary. Accordingly I find that the tenant is entitled to be reimbursed \$25.00.

I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, to make it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Based on the testimony of both the landlord and the tenant, I find that there was a term in the tenancy agreement that required the landlord to supply a lawn mower and the tenant had to use her own mower for two years. I find that the tenant is entitled to be compensated for this and that the amount being claimed is reasonable, regardless of the purported \$140.00 limit imposed by the landlord. Accordingly I find that the landlord must pay the tenant the remaining \$160.00 to fund the repairs.

I find it evident that there have been issues that arose which caused the tenant some concerns and stress and there were several incidents where the tenant had been put in a position that required the tenant to insist on compliance by the landlord with the Act or agreement. However, in order to find that the tenancy was devalued, there would need to be significant interference with the tenant's quiet enjoyment of the unit or disturbances that affected the value of the tenancy. In this regard, I find that the tenant is entitled to some recognition for her tolerance in showing the unit to buyers and having to force various issues with the landlord. I set this amount at \$100.00.

In regards to several issues that arose during the hearing, I make the following orders:

- The landlord is required to follow the Act in giving the tenant 24 hours written notice before showing the unit and must honour the tenant's request that she or another person be present to ensure that the dogs are controlled.
- The landlord is entitled to be given a copy of the key to the unit forthwith.
- The tenant is entitled to be reimbursed by the landlord for the cost of changing the locks upon presenting the landlord with the receipts.
- The tenant is not required to pay any accrued utility costs for water consumption to date.

Based on the testimony and evidence, I find that the tenant is entitled to a monetary order or a rent abatement in the amount of \$335.00 comprised of \$160.00 for the lawn mower repairs, \$25.00 for bank costs to suspend the cheques, \$100.00 for loss of enjoyment and the \$50.00 cost of filing the application.

### **Conclusion**

I order that the Ten-day Notices dated June 7, 2010 and June 9, 2010 are both cancelled.

I hereby issue a monetary order for \$335.00 to the tenant. This order must be served on the landlord and can be enforced if necessary in Small Claims Court. In the alternative, the tenant may choose instead not to serve the order and to merely deduct \$335.00 off of the next rent owed to the landlord as a one-time rent abatement.

The remainder of the tenant's application is dismissed without leave to reapply.

July 2010

Date of Decision

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Dispute Resolution Officer