

Dispute Codes: *MNR, OPR, MND, MNSD, MNDC, CNR, ERP, RP, PSF, RR, FF*

Introduction

This hearing dealt with applications by both the Landlord and the tenant pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and a monetary order for unpaid rent, cost of cleaning, repairs, garbage removal, payment of violation tickets and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her claim.

The tenant applied to cancel the notice to end tenancy and to order the landlord to comply with the *Act*, make emergency repairs, provide services and reduce the rent. The tenant also applied for a monetary order to be reimbursed for the cost and labour to install flooring and for the return of a portion of the rent due to loss of use of the basement.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. Since the tenancy has ended, the landlord's application for an order of possession and the tenant's application for emergency repairs, services and a rent reduction are no longer necessary. Therefore, this hearing only dealt with the applications for monetary orders by both parties.

Issues to be decided

Is the landlord entitled to a monetary order for unpaid rent, cleaning and the filing fee?
Is the landlord entitled to retain the security deposit in partial satisfaction of her claim?
Has the tenant established a claim for compensation for loss of use of part of the basement and for work done to replace the flooring in the rental unit?

Background and Evidence

The tenancy started in August 2009 and for a fixed term of one year. The tenancy agreement contained an addendum which was signed by the tenant and which documented the terms of an arrangement that both parties had entered into. In this addendum the tenant agreed to accept the home as is and also agreed to conduct “*any and all*” repairs at his own cost for the duration of the term of the lease. In return, the landlord agreed to reduce the rent to \$1,500.00. The tenant also stated in the addendum “*I have inspected the condition of the house and unconditionally agree to accept the house on the basis of my inspection*”. Shortly after the tenancy started, the property sold and the new owner (current landlord) agreed to allow the tenant to continue renting the unit on the same terms, until the lease expired.

The landlord stated that a few months into the lease, despite the agreement, there was no indication that any repair work was being carried out in the rental unit. In October, the tenant informed the landlord that the heating system was not working. The landlord sent in a repairman, who upon assessing the problem, informed the landlord that the pipes had been tampered with and therefore the warranty did not cover the cost of repairs. Since the landlord would have pay approximately \$6,000.00 to have it fixed, she decided to wait until she was in a financial position to fix the heating system. The landlord provided the tenant with three electric heaters and an electric fireplace.

On May 14, 2010, the local municipality conducted a safety inspection to determine if there was a grow operation at this rental unit. Four violation tickets were issued for:

1. Prohibited use of property
2. Prohibited accumulation of materials
3. Bypass meter
4. Allowing growth of mould or mildew.

The inspector condemned the property and disconnected the electrical and water supply. The inspector’s report indicates that the “*residence was used as a Grow Op*” and that a “*By pass was located in the wall of the bedroom*”. The tenants were forced to move out.

They continued to reside in a trailer parked on the driveway of the rental property for three weeks. At the hearing the tenant denied that she was involved in illegal activity involving a grow op and stated that it was the work of the prior tenants.

The tenant stated that she was pregnant and felt it was unsafe for her to go into the home to retrieve her belongings. The male tenant moved their possessions out of the home but left behind a large quantity of unwanted items. In addition, the unit was not cleaned and the refrigerator was left full of decomposing food. The landlord filed photographs of the condition of the property, both inside and outside. The landlord stated that the washer and dryer and the electric fireplace were taken by the tenant.

The tenant stated that the laundry machines belonged to her and that she did not take the fireplace. She also stated that the electric heaters were inadequate to heat the entire home and therefore the basement was cold and inhabitable for a period of eight months. The tenant is claiming compensation for the loss of use of the basement and for the cost of materials and labour to install new flooring.

Landlord's application:

The landlord is claiming the following:

1.	Rent for May 2010	\$1,500.00
2.	Loss of income for June 2010	\$1,500.00
3.	Violation tickets	\$2000.00
4.	Replace washer/dryer	\$700.00
5.	Cost of Eviction services	\$945.00
6.	Garbage disposal	\$500.00
7.	Professional cleaning	\$1120.00
8.	Yard work	\$400.00
9.	Replace refrigerator	\$400.00
10.	Electrical fireplace	\$225.00
	Total	\$9,290.00

Tenant's application:

The tenant is claiming the following:

1.	Loss of use of basement	\$4,000.00
2.	Material for new flooring	\$2,000.00
3.	Labour for new flooring	\$1,000.00
	Total	\$7,000.00

AnalysisLandlord's application:

1. Rent for May 2010

The tenant did not pay rent for May and therefore the landlord is entitled to \$1,500.00.

2. Loss of income for June 2010

The tenant moved out on May14, 2010 leaving the unit dirty and filled with unwanted possessions. The tenant continued to reside in a trailer parked on the driveway for three weeks. I find that the landlord was unable to rent the unit with the tenant still residing on the property and thereby suffered a loss of income for June. Accordingly, I find that the landlord is entitled to her claim of \$1,500.00.

3. Violation tickets

It is not clear whether the violations cited on the violation tickets were the tenant's doing or were in place prior to the start of the tenancy. The landlord did not conduct an inspection prior to purchasing the property and therefore is not aware of how and when these violations occurred. Therefore I must dismiss this claim but will do so with leave to reapply.

4. Replace washer and dryer

The landlord provided evidence to show that her purchase of the home included the washer and the dryer. The tenant stated that she owned the machines but was unable to provide any evidence to support her claim.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In this case, the tenant was unable to establish ownership of the machines and is responsible for bearing the cost of replacing the machines in the amount of \$700.00.

5. Eviction Services:

The legislation does not permit me to award any litigation related costs other than the filing fee. Therefore the landlord's claim for \$975.00 is dismissed.

6. Garbage disposal

7. Professional cleaning

8. Yard work

9. Replace refrigerator

The tenant agreed to pay the landlord for items #6 to #9 of her claim.

10. Electrical fireplace

The landlord filed evidence to show that the fireplace was missing from the insert.

Therefore I find that the tenant is responsible for the landlord's claim of \$225.00

Overall the landlord has established the following claim:

1.	Rent for May 2010	\$1,500.00
2.	Loss of income for June 2010	\$1,500.00
3.	Replace washer/dryer	\$700.00
4.	Garbage disposal	\$500.00
5.	Professional cleaning	\$1,120.00
6.	Yard work	\$400.00
7.	Replace refrigerator	\$400.00
8.	Electrical fireplace	\$225.00
	Total	\$6,345.00

Since the landlord has established a major portion of her claim, she is also entitled to the recovery of her filing fee of \$50.00 for a total claim of \$6,395.00.

Tenant's application:

1. Loss of use of basement

The tenant stated that the basement was unusable due to the lack of heat. However, the tenant used the basement for storage, laundry and toilet facilities. In addition the landlord provided electrical heaters for use in the rental unit. However, I find that the tenancy did lose value due to the loss of use of the basement bedroom.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. I find it reasonable to award the tenant \$800.00 towards her claim for the loss of use of the basement for eight months.

2. Material for new flooring

3. Labour for new flooring

As per the signed addendum to the tenancy agreement, I find that the tenant is responsible for the cost of the new flooring. Therefore the tenant's claim for a total of \$3,000.00 is dismissed.

Overall the tenant has established a claim for \$800.00. Since the tenant has established only a portion of her claim, she must bear the cost of filing her application.

The landlord has established a claim of \$6,395.00 and the tenant has established a claim of \$800.00. The landlord also has the security deposit in the amount of \$750.00.

I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$4,845.00 which consists of the landlord's claim of \$6,395.00 minus the total of the tenant's entitlement of \$800.00 plus the security deposit of \$750.00.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$4,845.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$4,845.00**

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: August 25, 2010.

Dispute Resolution Officer