



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, CNR, MNR, MNSD, & FF

### Introduction

This hearing dealt with cross applications by the parties. The landlord is seeking an Order of Possession and a monetary claim related to the tenants' failure to pay rent. The tenants seek to have the notice to end tenancy set aside as they have not paid rent due to emergency repairs required at the rental unit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

### Issues(s) to be Decided

Did the tenants spend money on emergency repairs pursuant to section 33 of the *Act* which permitted them to withhold rent?

Have the tenants breached the tenancy agreement, *Act* and regulations entitling the landlord to an Order of Possession and monetary relief?

### Background and Evidence

This tenancy began on September 15, 2009 for a fixed term lease ending on September 14, 2010. The monthly rent is \$2,600.00 due on the 15<sup>th</sup> of each month. The tenants paid a security deposit of \$1,300.00 on September 14, 2009. The landlord did not complete a written move in condition inspection report at the start of the tenancy.

The landlord submits that the tenants have been repeatedly late and behind in their monthly rent. As of September 15, 2010 the tenants were \$4,600.00 behind in their monthly rent. The landlord provided a spreadsheet showing the tenants payments since January 2010 resulting in the outstanding sum of \$4,600.00. The current outstanding rent owed is \$7,200.00. The landlord submitted as evidence copies of notices to end tenancy which he issued throughout the months and letters from the tenant outlining

possible payment schedules to pay the outstanding rent. The landlord stated that the tenants never followed through and after serving the tenants with the 10 day Notice to End Tenancy Due to Unpaid Rent on September 18, 2010 he filed this application for Dispute Resolution.

The tenants submit that they did not pay the outstanding rent due to repairs which the landlord has failed to complete throughout the term of this tenancy. The tenants specifically addressed four emergency repairs which were required to the rental unit and formed the basis for the tenants not paying the rent owed.

Specifically, the tenants stated that the septic field and tank were faulty, that the roof had a major leak causing significant damage to their personal possessions, that the hot water tank needed to be replaced and had a gas leak, and the furnace/boiler room was in disrepair with rusty pipes, poor electrical wiring and possible black mould.

In support of their position the tenants provided several photographs of the areas identified. The tenants stated that a gas inspector has been in the rental unit and wanted to shut the gas connection down to the rental unit due to the gas leak, but did not because of this pending hearing and the tenants' elderly parent was living in the home. The tenants requested that I call the gas company and speak with a safety inspector by the name of Chris. The tenants did not have a last name for the gas inspector or a direct contact number. I attempted to reach this potential witness through the direct toll free phone number provided by the tenants without success.

The tenants stated that all of these problems were long standing and ignored by the landlord. They stated that they requested that the landlord complete repairs in writing but did not provide a copy of this letter. The tenants could not explain why their letters to the landlord regarding payment of outstanding rent did not raise the issue of these repairs.

The landlord stated that this is the first time that the tenants have raised these issues. He stated that the tenants have requested repairs before and he has always complied. The landlord stated that to his knowledge the septic system, water tank, furnace room and roof were all in good repair. The landlord doubted the tenants' evidence that there was a gas leak as the gas inspector did not immediately order the tenants out of the situation. The landlord stated that if there was an actual gas leak the gas inspector would have taken immediate steps to resolve the problem.

### Analysis

Section 26 of the *Act* provides that a tenant must pay rent, whether or not the landlord complies with the *Act*, unless the tenant has a right under the *Act* to deduct all or a portion of the rent owed. The tenants confirm that they have no order to deduct rent. Therefore, the tenants have to burden of proving that they had grounds under the *Act* not pay \$7,200.00 in outstanding rent to date.

Section 32 of the *Act* requires landlords to maintain a residential property in a state of repair which meets health and safety standards required by law and which is suitable for occupation by a tenant in regard to the age, character and location of the rental unit. If a landlord fails to comply with section 32 of the *Act* a tenant may file an application for Dispute Resolution seeking an Order that the landlord make repairs to comply. When making this type of application the tenant has the burden of proving that the rental unit is not suitable for occupation or does not meet current health and safety standards required by law.

Section 33 provides that in the event of an emergency repair, such as a major leak, a tenant may proceed to complete the emergency repair only if the following requirements are met:

- Emergency repairs are needed;
- the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- following those attempts, the tenant has given the landlord reasonable time to make the repairs.

The tenant may then present the bill related to the emergency repair and if not paid may then deduct this sum from the monthly rent owed.

I find that the tenants have not demonstrated that they had a right under the *Act* to withhold rent money and that the tenants are in breach of section 26 of the *Act*. The tenants had no collaborating evidence from a health authority or utility to show that the septic tank or field, gas lines, water tank or roof posed a health and safety issue. The tenants failed to present any compelling evidence to support their claim that there were emergency repairs required on the rental unit.

In addition, the tenants failed to demonstrate that they notified the landlord of the repairs or gave the landlord a reasonable amount of time to complete the repairs and finally, the tenants failed to present receipts towards emergency repairs which could be deducted from the rent owed of \$7,200.00. The parties did agree that the tenants did spend \$250.00 on one repair which the landlord know of and agreed to reimburse the tenants.

As a result I dismiss the tenants' application and find that the 10 day Notice to End Tenancy Due to Unpaid Rent is valid. I grant the landlord's application and grant the landlord an Order of Possession effective **two (2) day** after it is served upon the tenants and a monetary claim due to outstanding rent for the sum of **\$7,000.00**. This sum includes recover of the \$50.00 filing fee paid by the landlord for his application for Dispute Resolution and deducts the sum of \$250.00 which the landlord acknowledged is owed to the tenants related to a repair expense they paid for.

### Conclusion

I dismiss the tenants' application.

I grant the landlord's application and have issued an Order of Possession and a monetary Order due to the tenants' breach of the tenancy agreement and *Act*.

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: October 29, 2010.

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Dispute Resolution Officer