



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

RE-HEARING AND DECISION

Dispute Codes CNR, MNDC, OLC, ERP, RP, RR, FF

Introduction

This hearing was convened by way of conference call as a re-hearing of the tenants' application originally heard on July 5, 2010. The landlords were granted an Order of Possession and a monetary order, and the tenants subsequently requested review consideration. In a decision dated September 28, 2010, a re-hearing on the matter was ordered which is before me today to deal with the tenants' application 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 emergency repairs for health or safety reasons; for an order that the landlord make repairs to the unit, site or property; for an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlords for the cost of this application.

The parties attended, gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. All information provided has been reviewed and is considered in this Decision.

The review hearing commenced on October 27, 2010 and was reconvened on November 1, 2010 as a continuation of the evidence heard October 27, 2010.

During the course of the hearing, the parties agreed to an Order of Possession in favour of the landlord effective November 30, 2010, and I hereby grant an Order of Possession effective on that date at 1:00 p.m.

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?

Are the tenants entitled to an order that the landlord comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order that the landlord make emergency repairs for health or safety reasons?

Are the tenants entitled to an order that the landlord make repairs to the unit, site or property?

Are the tenants entitled to an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

This tenancy began as a fixed term tenancy on June 15, 2009 until the expiry date of June 30, 2010, and then reverted to a month-to-month tenancy, and the tenants still reside in the rental unit. The monthly rental amount is \$1,100.00, however the parties disagree as to the date rent is payable; the tenant stated that the rent is payable in advance on the 15th of each month, and the landlord stated rent is payable in advance on the 1st day of each month. The landlord also testified that the tenants are in arrears \$7,150.00. The landlord also collected a security deposit from the tenants on June 5, 2009 in the amount of \$550.00.

The tenant testified that on May 11, 2010 she was personally served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. She stated that her rent was paid up to August 15. The notice stated that \$1,100.00 that was due on May 1, 2010 had not been paid, it was issued on May 11, 2010 and had an expected date of vacancy of May 21, 2010.

The tenant further stated that the furnace in the rental unit caught fire on September 21, 2010 and she had been evacuated. The gas was shut off at the end of November, 2009

because the gas company said it was going to blow up. The landlord had the furnace fixed in January, 2010 but the tradesperson refused to do anymore work after the unit caught fire in September.

The tenant further testified that the unit is in need of repairs:

- only some of the electrical outlets are operable, and none of the downstairs outlets are operable;
- there is no heat in the bathroom or one of the bedrooms;
- there is no hot water in the laundry area;
- an outside door does not fit and allows water to enter into the house;
- cupboard drawers are broken;
- the kitchen and bedroom lights don't work;
- broken glass, needles and garbage removal is required in the yard;
- the door lock needs to be changed because 1 key fits all and she thinks someone has been entering the unit.

The tenant also testified that a flood occurred in the house which destroyed 3 paintings, some 1985 hockey memorabilia, and part of a book collection owned by the tenants. She stated that the flood was caused because the door does not fit and allows water to enter the house.

She also testified that a couple of days before moving in, a break-in occurred in the house. Doors had been jammed open, and the tenants did some repairs. She stated they called the landlord multiple times, but he said the tradespersons told him they were doing the job but didn't.

The tenants are claiming \$5,000.00 in damages.

The landlord's agent testified that a year ago all of the electrical plugs and the heat issues were repaired. He also testified that the gas was shut off in November, 2009 because the tenants had not paid the gas bill. He also testified that the tenants fell into arrears in rental payments in June, 2010, and currently owe \$4,804.45 for outstanding rent to the end of November, 2010. The landlord has not applied for dispute resolution, but issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in May, 2010.

The landlord's agent disagrees with the amounts claimed by the tenants and testified that repairs have been made, but when trades persons attend to complete repairs, the tenants are not satisfied with the work. He further stated that no ducting is missing, he disagrees that there is no heat in the bedroom, and the hot water in the laundry room has been fixed.

The landlord also testified that the tenants had originally rented only the upper unit of the house, but the landlord (owner) permitted them to use a room on the lower level and therefore electrical outlets on that level are not an issue because that portion of the building is not a part of the tenancy.

Analysis

In the circumstances, I find that the flood in the basement caused damage to the book collection, hockey memorabilia and paintings. The tenant was not able to attach a value to any of those items, other than to say that the book collection cost about \$3.00 per book and about 40 books in the collection were damaged. I find that the tenants are entitled to reimbursement of \$120.00 for the books, \$100.00 for the hockey memorabilia and \$50.00 for the paintings.

I further find that the tenants' application for an order reducing rent for repairs, services or facilities agreed upon but not provided has not been entirely proven. The landlord has disputed most of the repair items, and I find that the tenant has failed to establish a claim for \$5,000.00. The tenant also failed to establish over what period of time the tenancy was devalued by the landlord's failure to respond to repairs. I do find, however, that 4 cupboard drawers are unusable and a flood had occurred. In the circumstances, I find that the tenancy was devalued by \$100.00.

I accept the evidence of the landlord that the tenants have failed to pay rent, however I have no application by the landlord before me and cannot therefore grant a monetary order for unpaid rent.

Due to the agreement by the parties that the tenants will vacate the unit on or before November 30, 2010, the tenants' application for an order that the landlord comply with the *Act*, regulation or tenancy agreement, and the applications for repairs to the unit must be dismissed.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords effective November 30, 2010 at 1:00 p.m.

The tenants' application for a monetary order is hereby allowed at \$370.00. The tenants are also entitled to recover the \$75.00 filing fees from the landlords, and I direct that the amount of rent owed by the tenants be reduced by \$445.00.

The tenants' application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

The tenants' application for an order that the landlord make emergency repairs for health or safety reasons is hereby dismissed without leave to reapply.

The tenants' application for an order that the landlord make repairs to the unit, site or property is hereby dismissed without leave to reapply.

The tenants' application for an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided is hereby dismissed without leave to reapply.

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: November 09, 2010.

Dispute Resolution Officer