



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes**

MND MNR FF  
MND RP O FF

### **Introduction**

This hearing convened on September 24, 2010 and again for the present session on November 2, 2010. This decision should be read in conjunction with my interim decision of September 24, 2010. The previous hearing was adjourned after the Landlord was provided a service address for the Tenants. The Landlord has since filed an application for dispute resolution which will be heard today along with the Tenants' application.

The Landlord filed seeking a Monetary Order for unpaid rent or utilities, damage to the unit, site or property and to recover the cost of the filing fee from the Tenants.

The Tenants filed seeking a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to obtain an Order to make repairs to the unit, site or property, for other reasons, and to recover the cost of the filing fee from the Landlord.

Service of the hearing documents by the Landlord to the Tenants was done in accordance with section 89 of the Act, sent via registered mail on October 7, 2010. Registered mail receipts were provided in the Landlord's evidence. The Tenants confirmed receipt of the delivery notice from Canada Post and argued they only received the notice on approximately October 29, 2010 and they have not had an opportunity to pick up the package because they work. After consideration of the evidence before me I find each Tenant has been sufficiently served with Notice of the Landlord's application and evidence October 12, 2010, in accordance with section 90 of the Act.

Service of the hearing documents by the Tenants to the Landlord was done in accordance with section 89 of the Act, sent via registered mail on August 17, 2010. The Canada Post tracking number was provided in the Tenants' evidence. Based on the

written submissions of the Tenants, I find the Landlord has been sufficiently served with the Dispute Resolution Proceeding documents and the Tenants' evidence.

The parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

#### Issues(s) to be Decided

1. Is the Landlord entitled to a monetary order?
2. Are the Tenants entitled to a monetary order?
3. Are the Tenants entitled to an Order to have the Landlord repair the unit?

#### Background and Evidence

Witness (1) provided testimony that he has been a tenant at the rental house since July 29, 2010. The rental house consists of three separate rental units, a front and back unit on the main floor and one upper unit. He stated that the Landlord told him that the Tenants never had their rent and they installed a clothes line. The Landlord told the Tenants to remove the clothes line but they did not.

Witness (2) testified that he attended the rental unit with the Landlord on January 20, 2010 when the Landlord attempted to collect rent from the Tenants. The female Tenant only gave the Landlord \$120.00 when rent was \$700.00. The Landlord told the Tenant that he would complete a receipt for which she replied that he could give it to her when she paid the balance on the rent. On August 30, 2010 Witness (2) went with the Landlord and witnessed the Landlord post a 10 Day Notice to End Tenancy to the Tenants' door. They also went into the basement and saw the water leak from the Tenants' unit and saw that there was black mould on the ceiling. He stated that the water leak was in a common area, not in anyone's rental unit and the water was leaking onto electrical wires.

I heard undisputed testimony that the parties entered into a month to month tenancy agreement effective September 1, 2009. Rent was payable on the first of each month in the amount of \$700.00. The Tenants' paid a security deposit of \$350.00 on September 1, 2009. The Tenants said they vacated the rental unit the same day the Landlord served them with the 10 Day Notice to End Tenancy which, as far as they could recall, was August 30, 2010.

The Tenants testified they are seeking \$3,650.00 as listed on their application for dispute resolution. They stated that the Landlord provided them with material to fix the

water leak coming from their shower however he did not provide them with an adequate amount of grout. They stated that whenever the Landlord wanted money for rent he would turn off the hot water so the Tenants began to go to a hotel to shower. They confirmed they made no attempt to seek assistance prior to filing their application on August 13, 2010, because the Landlord's actions were "intermittent". They said the problems began in February 2010 and that they fell behind in their rent after about three months into their tenancy. The Landlord had taken action against them previously however they came to an agreement to make payments so they did not have to attend a hearing. They stated that they had made arrangements to pay the Landlord money every Friday and that the Landlord refused to provide them with receipts. The Tenants confirmed that they do not have any records of the amounts or dates when they made payments but they are certain they are "more than caught up on their rent by now". They referred to the document where they agreed to sign over the ownership of their truck if they failed to pay their rent. They still have their truck so certainly they must have paid the rent owed.

The Tenants stated that they were withdrawing their request for an order to have the Landlord make repairs to the rental unit as they no longer reside there.

The Landlord's Agent testified that the Landlord is seeking \$4,125.00 in unpaid rent and utilities as noted in the summary of rental paid provided in evidence. The Tenants were required to pay \$50.00 per month towards utilities as supported by the addendum provided in the Landlord's evidence. The Agent stated that he had the Landlord's receipt book in front of him for which he provided testimony of dates payments were made by the Tenants; two of which were for amounts that were not rounded to the nearest dollar and were \$32.40 paid October 9, 2009 and \$54.18 paid November 1, 2009. The Agent stated that he assumed these amounts were paid towards utilities however there was nothing noted on the receipt to indicate this. He confirmed there are no receipts written to any other tenants, only these Tenants, and that the original and copy of the receipts were still in the book. The Agent confirmed he assisted the Landlord in putting the evidence together for their submission and could not answer why copies of the receipts were not provided in the Landlord's evidence.

The Agent drew attention to the tenancy agreement provided in evidence which supports that laundry was not included in the tenancy agreement therefore the Tenants were not supposed to be using the laundry facilities. The Agent confirms the electricity to the stove was turned off but for only a short period of time until an electrician could come and inspect the area where the water leak was to ensure it would not cause problems. The Agent could not provide testimony of the dates the power was turned off.

It is the Landlord's position that the Tenants were going to fix the water leak and that the Tenants would not allow the Landlord to enter the rental unit.

In closing the Tenants argued they only ever received one receipt and that was for their first payment of rent in September 2009, and that it was written on a piece of paper and not in a receipt book. As for the leak the Landlord asked them to fix it and then did not provide them with the materials to do it. The Tenants are more than sure they caught their rent payments up because they were making payments every Friday. They also had problems with the Landlord when he was drunk and would come around to collect money. They had to call the police on at least three occasions.

### Analysis

I have carefully reviewed and considered all of the testimony and evidence provided by both parties which included among other things: photos of the rental unit; a motel receipt; a copy of the 10 Day Notice to End Tenancy; a handwritten statement from the Tenants which lists their claim to include three months of rent for \$2100.00, plus \$200.00 for lack of laundry facility, \$850.00 for lack of shower and hot water and \$500.00 for lack of cooking facility; copies of the tenancy agreement and addendums, a repayment agreement dated February 3, 2010, an agreement to sign over the Tenant's truck to the Landlord if payment is not made by July 16, 2010; and Landlord's witness statement.

Section 7(1) of the Act provides 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 the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence.

### **Tenant's application**

The Tenants confirmed they occupied the rental unit for the period between September 1, 2009 and August 30, 2010 and that from approximately February 2010 they began to experience problems with their Landlord turning off the hot water or the electricity to their stove when the Landlord wanted money. The Tenants were not able to provide evidence of the dates or length of time they had to suffer the Landlord's alleged actions while the Agent for the Landlord provided opposing testimony arguing that the power was turned off for only a short period of time while they awaited an electrician's

inspection. The Tenants confirmed they made no prior attempt to seek assistance or obtain orders to have the Landlord comply with the Act and provide the reduced services, therefore I find the Tenants have failed to mitigate their loss as required under section 7(2) of the Act.

The Tenants are seeking compensation equal to three months rent (3 x \$700.00). The evidence supports the Tenants occupied the rental unit fully up to August 30, 2010 and are therefore required to pay the rent. Based on the above I find the Tenants have failed to provide sufficient evidence in support of this claim and it is hereby dismissed.

The Tenants claim \$200.00 for lack of laundry facility, however the tenancy agreement does not provide for laundry services. The claims for \$850.00 for lack of shower and hot water plus \$500.00 for lack of cooking facility are not supported with proof of dates and times of when the alleged services were removed or restricted; therefore I cannot determine a value of the alleged loss. Based on the aforementioned I find there is insufficient evidence to support the Tenants' claims and they are hereby dismissed.

The Tenants have not been successful with their claim; therefore I decline to award recovery of the filing fee.

### **Landlord's application**

The Landlord's claim is comprised of \$3,575.00 in unpaid rent plus \$550.00 in unpaid utilities. The Landlord's Agent provided testimony of the amounts and dates written on receipts, which were not provided to the Tenants, and confirmed the original receipts were still attached to the receipt book. In support of his claim the Landlord provided only a typed document that lists a month and the amount paid. There is no indication of the actual date of payments and all amounts are rounded to an even dollar amount with no indication that payments of \$32.40 and \$54.18 were received as provided in the Agent's testimony.

The Tenants provided opposing testimony that although their rent was behind they managed to get caught up before they moved. The Tenants referred to the evidence for which the Landlord provided which included copies of the repayment plan dated February 3, 2010 for weekly payments however there is no mention of the outstanding amount. They also referred to a copy of the agreement dated July 4, 2010 where the Tenants agreed they would give the Landlord their truck if \$750.00 was not paid before July 16, 2010. The Tenants argued that they still owned their truck therefore they must have paid the rent. I note that the July 4, 2010 agreement relates to only \$750.00 unpaid rent while the 10 Day Notice issued August 30, 2010 lists \$3,575.00 in unpaid rent and \$550.00 in unpaid utilities.

In the absence of accurate accounting records and in the presence of contradictions in amounts owed and the Tenants' opposing testimony I find the Landlord has provided insufficient evidence to prove his application and I hereby dismiss his claim.

The Landlord has not been successful with his application; therefore I decline to award recovery of the filing fee.

Conclusion

**I HEREBY DISMISS** the Tenant's application, without leave to reapply.

**I HEREBY DISMISS** the Landlord's application, 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 02, 2010.

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Dispute Resolution Officer