



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MT, CNR, MNDC, LRE, FF

Introduction

This hearing dealt with the tenants' application to cancel a Notice to End Tenancy for unpaid rent and more time to make the application; for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; for Orders suspending or setting conditions upon the landlord's right to enter the rental unit; and, recovery of the filing fee paid for this application. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

The landlord confirmed receiving an evidence package from the tenants on October 25, 2010 and I have considered that evidence package in making this decision. However, I determined that the landlord had submitted documentary evidence upon the tenants and the tenants submitted some evidence upon the landlord the day before the hearing, and I had not been provided a copy of those documents prior to the hearing. The Rules of Procedure outline the time limits for serving evidence upon the other party and Residential Tenancy Branch. I have not considered the documents that were not served within the time required time limits..

The tenants' advocate raised the following preliminary issue. The tenants had requested more time to dispute the Notice to End Tenancy; however, as the tenants had filed this application within five days of the Notice being issued, the request for more time to dispute the Notice was not necessary. Upon review of the Notice and the application I found the tenants were within the time limits to dispute the Notice; therefore, it was not necessary to consider the tenants' request for more time.

The tenants' advocate raised another preliminary issue. The tenants had appeared at a dispute resolution hearing on March 22, 2010 to dispute a Notice to End Tenancy for unpaid rent issued in February 2010. The advocate was of the position that the issue of unpaid rent prior to March 2010 has already been heard and decided upon and could not be heard again. The advocate requested that I make a ruling as to the matter of unpaid rent being *res judicata*. As I had not yet heard from the landlord with respect to the Notice that was before me and the reasons for its issuance, I noted the advocate's position and proceeded to hear from the parties with respect to the Notice to End Tenancy issued September 28, 2010.

Issues(s) to be Decided

1. Should the Notice to End Tenancy for Unpaid Rent issued September 28, 2010 be upheld or cancelled?
2. Have the tenants established an entitlement to monetary compensation from the landlord for damage or loss under the Act, regulations or tenancy agreement?
3. Is it necessary to issue Orders suspending or setting conditions upon the landlord's right to enter the rental unit?

Background and Evidence

The tenancy agreement provides that the tenancy commenced November 1, 1999 and requires the tenants to pay rent of \$740.00 on the 1st day of every month. The tenants are currently paying rent of \$770.00 per month. On September 1, 2010 a new property management company ("AWM") took over management of the residential property.

Notice to End Tenancy

On September 28, 2010 AWM issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) to the tenants. The Notice indicates a balance of \$4,661.70 was

outstanding as of September 1, 2010 and has an effective vacancy date of October 8, 2010.

Upon enquiry, the property manager testified that he was informed by the landlord that the tenants had an outstanding balance of \$4,661.70 and AWM issued the Notice after trying to meet with the tenants to determine the actual amount outstanding. The landlord testified that he had requested the tenants obtain and provide him with records from the Ministry to show the landlord which Ministry cheques had been cashed by the landlord. The landlord submitted that the tenants did not provide the requested information prior to the issuance of the 10 Day Notice and that the tenants had requested the landlord issue the 10 Day Notice.

Tenants' claim for compensation

The tenants have claimed compensation of \$15,000.00 for damage or loss under the Act, regulations or tenancy agreement. The tenants did not provide a breakdown of the amount of compensation they were seeking for different violations by the landlord. From the tenants' submissions, it was evidence there were three types of damage or loss being alleged by the tenants.

1. Harassment for rent

The tenants submitted that since the landlord acquired the property the tenants have been harassed by repeated requests for rent even though they have paid their rent. The tenants claim that 10 – 15 agents for the landlord have requested rent from them at various times of the day. The tenants described how unknown individuals have appeared since the landlord acquired the property to demand rent and that the demands have increased from \$385.00 to \$1,000.00 to \$3,000.00 to nearly \$5,000.00 now. The tenants provided three dates in 2008 and two dates in 2009 where verbal demands were made and then in 2010 two Notice to End Tenancy have been issued as well as verbal conversations with the property manager about rent payments. The tenants submitted that the demands for rent has caused a great amount of stress for them and has

negatively impacted their health by way of anxiety, depression, insomnia, weight loss and thoughts of suicide.

2. Landlord's failure to make repairs

The landlord has failed to make repairs to the fridge and mouldy cracks in the walls. The landlord has failed to smoke detectors despite creating two holes in the ceiling and has failed to address problems with insufficient power supply in the kitchen, deteriorating toilet parts and broken mailboxes. The tenants stated that the previous manager had asked them about the swing on the fridge door and the size of the fridge as a new one was going to be ordered but that none was ever supplied. The tenants stated that the previous property manager had taken photographs of the mouldy cracks in the rental unit but that no repair work has been done to remedy the problem. The tenants stated that on occasion they have had to pick up mail at the postal outlet as the post office would not deliver to the building.

3. Termination of use of storage locker

The tenants lost use of a storage locker in the building and the landlord threw out the tenants' memorabilia and possessions stored in the storage locker.

The landlord testified that the tenants have not been harassed for unpaid rent. Rather, the landlord described how there was a meeting with the tenants to request the tenants provide statements from the Ministry to verify whether rent cheques have been cashed by the landlord. The landlord described another meeting with the landlord's bookkeeper with respect to unpaid rent and described the bookkeeper as a courteous person. AWM also acknowledged having two conversations with the tenants regarding outstanding rent and described the conversations as polite. Initially, the landlord stated that prior to AWM there was only one other agent for the landlord and the landlord requested the tenants provide names of the individuals appearing on behalf of the landlord. Upon direct questioning by the advocate the landlord acknowledged that his

two brothers have acted on his behalf, as well as his bookkeeper, and two previous property managers.

The landlord was of the position the tenants have pre-existing medical conditions and the landlord's actions have not been disrespectful or the cause of the tenants' health problems.

The landlord responded to the tenants statements with respect to repairs as follows:

- The former property manager took pictures of all units, not just the rental unit
- The fire department is currently reviewing structural deficiencies with the landlord and fire suppression requirements
- The landlord was unaware of the fridge door not closing, the electrical issue in the kitchen or the issues with the toilet
- The mould could be a result of a sanitary and cleanliness issue but the landlord is willing to inspect the unit

The landlord stated that tenants' mailbox is currently functioning and the post office is delivering mail. The landlord acknowledged that the post office had had previous delivery issues due to the entry system; however, those issues are resolved. I noted that in a previous dispute resolution decision issued to the landlord the landlord had testified new mailboxes were on order and I asked the landlord to explain why the new mailboxes were not yet installed. The landlord's initial responses were unresponsive to the questions posed but ultimately the landlord claimed the new mailboxes were ordered without authorization by the former property management company. The landlord explained that this is an older building and that he has decided to repair deficiencies rather than replace items.

With respect the storage lockers, the landlord stated the fire department ordered the storage units be vacated and the bookkeeper stated that with one of the tenants had confirmed that the contents of the storage locker had been removed.

Landlord's right to enter the rental unit

The tenants requested the landlord provide written 24 hour notice to enter the unit. The landlord did not object to this request.

Included in the documentary evidence provided by the tenants were copies of the tenancy agreement, two Notices of Rent Increase, the 10 Day Notice, numerous print-outs from the Ministry and bank statements with respect to rent payments, the tenants' written submission; and, previous decisions issued to the parties March 22, 2010 and a decision issued to other tenants in the residential property on July 20, 2010.

The landlord did not provide any documentary evidence before the hearing that could be considered as being on-time.

Analysis

Upon consideration of all of the evidence before me, I make the following findings with respect to the issues before me.

Notice to End Tenancy for Unpaid Rent

The amount of outstanding rent on the Notice appears to represent several months of unpaid rent. Yet, the written communication from AWM that preceded the Notice merely states the amount of \$4,661.70 was determined "after a review of our records". Further, the landlord did not provide any ledger or accounting for this hearing as to how that amount was determined. In contrast, the tenants appear to have gone to great effort to provide copies of numerous months of Ministry screen-prints and bank account statements to demonstrate proof of rental payments.

As the landlord and property manager were informed during the hearing, the landlord has the burden to show how the landlord arrived at the amount stated on the Notice. Further, a landlord is expected to maintain adequate records in recording rent charged

and collected. It is not upon a tenant to maintain the landlord's records. As the landlord did not provide sufficient evidence to show how the balance of \$4,661.70 was determined, I grant the tenants' request to cancel the Notice to End Tenancy and this tenancy shall continue.

As I have granted the tenants' request to cancel the Notice to End Tenancy due to the landlord's failure to support the issuance of the Notice I find it is not necessary to grant the advocate's request for a ruling with respect to the issue of unpaid rent being previously heard and decided upon. However, upon hearing from both parties, I am satisfied that numerous verbal requests have been made of the tenants with respect to payment of outstanding rent without clear written documentation being provided by the landlord. Therefore, I find it necessary to issue the following ORDERS.

I ORDER the landlord or any agent acting on behalf of the landlord cease all verbal requests to the tenants for payment of rent. Any future requests for outstanding rent must be done in writing and duly served upon the tenants in accordance with section 88 of the Act.

I ORDER that the landlord or property manager must to provide a written accounting or ledger to the tenants at least five days before issuing another 10 Day Notice to the tenants. The accounting or ledger must show the amount of rent charged for a particular month and the payment(s) received for that month along with a balance outstanding for that month.

Upon receipt of a written accounting or ledger, the tenants are at liberty to provide the landlord evidence to show payment has been made for a particular month or file an Application for Dispute Resolution seeking compliance with the Act, regulations or tenancy agreement.

Tenants' compensation – Loss of quiet enjoyment

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Under the Act, tenants are entitled to the right to quiet enjoyment of their rental unit and the common areas, free from unreasonable disturbance or significant interference. The ordinary meaning of harassment is engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.

With respect to the tenants' claims of harassment for rent I find the tenants provided five specific dates where verbal demands were made of them for rent and I prefer the tenants' testimony that such demands were made over the landlord's denial of such actions. While I accept it was not the landlord himself making the demands I am satisfied that the demands were made by persons acting on behalf of the landlord. While I appreciate that the verbal demands were made without supporting documentation for the tenants, I do not find the five verbal demands over three years to be indicative of persecution, intimidation or harassment. Thus, I do not award compensation to the tenants for the landlord's conduct prior to February 2010.

I find the tenants' testimony that they believed the issue of unpaid rent was resolved upon being served with a 10 Day Notice in February 2010 and having the Notice cancelled in March 2010 by way of a dispute resolution proceeding to be more

compelling. The evidence before me shows that the landlord did not provide supporting documentation prior to the hearing in March 2010 or appear at the hearing held in March 2010. The landlord has not provided supporting documentation to the tenants prior to the issuance of the 10 Day Notice in September 2010. Further, the landlord has placed the burden to obtain records of rent payment upon the tenants. I find it very evident that the landlord has failed to maintain adequate records of rent payments and has tried to put the reverse onus upon the tenants to show rent payments have been made. The tenants did obtain numerous printouts from the Ministry in October 2010 which shows me that the tenants have had to scramble to obtain numerous screen-prints and bank statements as proof of payment after the landlord issued another unsupported Notice to End Tenancy.

I find it more likely than not that the landlord did not get the documents he had been requesting from the tenants and decided to issue a 10 Day Notice to compel the tenants to retrieve the documents he was seeking for his own purposes. I find this behaviour highly inappropriate and the landlord ought to have known this would place a great burden upon the tenants especially since they have had a long term tenancy and they did not know what months the landlord was seeking. Therefore, I find the actions of the landlord meet the definition of harassment and **I award the tenants compensation of \$770.00 for this harassment.**

Tenants' compensation -- Repairs

It is important to note that the tenants did not make a request for repair orders and I do not provide such with this decision. Rather, with this application the tenants requested compensation for repairs not made by the landlord and I have considered those requests below. The tenants remain at liberty to make a subsequent application for repair orders.

Under the Act a landlord must maintain a rental unit so that it meets health, safety and building laws and is suitable for occupation. Where a tenant is seeking compensation for repairs not made by the landlord a tenant is expected to show that the landlord was

informed of the repair issue or the landlord knew of the repair issue and did not take sufficient action to repair the item. Further, the tenant must demonstrate how the deficiency diminished the value of the tenancy.

The tenants have satisfied me that their fridge door is not functioning properly and requires repair or replacement. The tenants have satisfied me that the landlord has known of this problem because the former property manager asked the tenants about the swing of the fridge door. The tenants satisfied me that the failure to repair the fridge infringes on the tenant's ability to keep foods from spoiling pre-maturely. The tenants testified the fridge became problematic in January 2010. Affording the landlord a reasonable amount of time to respond to the issue, **I award the tenants compensation of \$100.00 for the months of February through November 2010 for a total award of \$1,000.00. If the fridge is not yet repaired or replaced with a properly working fridge by the end of November 2010, I further authorize the tenants to withhold \$100.00 per month until their fridge door is repaired or the fridge is replaced with a properly functioning fridge.**

With respect to the mouldy walls I accept that there may be mould present on some of the walls in the rental unit; however, I find the tenants did not provide sufficient evidence, such as photographs or detailed descriptions, to establish the extent of the mould or the diminished value of the tenancy. The tenants submitted in writing that the mould ran from the floor to the roof but I am unable to determine how many cracks there are, in which rooms, how long they have been present, or the like. Therefore, I find the tenants did not meet their burden of proof to warrant compensation and I dismiss this portion of the claim.

With respect to the inadequate power supply in the kitchen and deteriorating toilet parts I do not find sufficient evidence that the tenants had notified the landlord of these issues prior to making this application and I do not award the tenants compensation for these items.

The fire department or safety authority is responsible for ensuring the units meet fire code and I heard that the landlord has been working with the proper authority to bring the building in line with the code. However, I am satisfied the smoke detectors have been missing in the unit for quite some time. Therefore, **I award the tenants \$25.00 so that they can purchase a battery operated smoke detector and batteries and install the smoke detector in their unit.**

With respect to mailboxes the parties provided disputed evidence. The tenants submit that the former property manager had promised new mailboxes for July 2010 and that the new mailboxes did not arrive. The landlord confirmed that he had not installed new mailboxes but claimed the existing mailboxes were repaired. The tenants confirmed that their mailbox still locks. From the tenants' submission I find it unclear as to the dates the tenants' were not receiving mail at the building or the value of the loss incurred by the tenants. Therefore, I dismiss this portion of the tenants' claim.

Tenants' compensation – loss of storage locker

Under section 27 of the Act, a landlord must not terminate a service or facility without 30 days of written notice and a reduction in rent by an amount that is equivalent to the reduction in the value of the tenancy. Under Act provides a definition of "service or facility" and includes storage facilities.

It is undisputed that the tenants lost use of a storage locker. While the landlord explained that the storage lockers were vacated to comply with fire regulations, the reason for the termination does not extinguish the tenant's right to a reduction in rent. Therefore, **I award the tenants \$25.00 per month for loss of the storage locker starting July 2009 for an award of \$425.00. I further ORDER the rent is reduced \$25.00 per month, indefinitely, for loss of the storage locker.**

I do not award the tenants compensation for items that may have been discarded from the storage locker as the landlord's bookkeeper stated that one of the tenants advised

her that they had cleared out the items they wanted in the locker. Further, the tenants failed to substantiate a value of the discarded items.

Landlord's Right to Enter Rental Unit

Upon hearing from the parties, I grant the tenants' request and Order that the landlord provide written 24 hour notice before entering the rental unit, as provided by section 29(1)(b) of the Act. Section 29(1)(b) states that the landlord must give notice as follows:

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

It is important to note that when a document is posted on the door it is deemed to be received three days later under section 90 of the Act. Therefore, if the landlord posts a 24 hour notice, the landlord must wait until the fourth day to enter.

I make no award of the filing fee as the filing fee was waived for this application.

Conclusion

The Notice to End Tenancy has been cancelled and the tenancy continues. The landlord has been ORDERED to cease all verbal demands for rent. The landlord has been ORDERED to give the tenants a written accounting or ledger at least five days before issuing another 10 Day Notice to End Tenancy. The landlord has been ORDERED to give the tenants written 24 notice before entering the rental unit in accordance with section 29(1)(b) of the Act.

The tenants' rent has been reduced \$25.00 per month indefinitely due to termination of a service or facility (the storage locker). If the landlord does not repair or replace the

tenants' fridge by the end of November 2010 the tenants are authorized to further reduce rent by \$100.00 per month until such time the fridge is repaired or replaced with a properly functioning fridge.

The tenants have been provided compensation as follows:

Loss of quiet enjoyment – harassment for rent	\$ 770.00
Landlord's failure to repair fridge	1,000.00
Compensation for tenants to purchase smoke detector	25.00
Loss of storage locker	<u>425.00</u>
Monetary Order for tenants	\$ 2,220.00

The tenants are authorized to withhold rent otherwise payable until such time the above award of \$1,950.00 has been realized by the tenants. In the event the tenancy ends before the award is realized I provide the tenants with a Monetary Order to ensure they receive the benefit of the above award.

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 18, 2010.

Dispute Resolution Officer