# Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes

CNR, OPR, MNR, MNSD, MNDC, RR, FF

Introduction

This hearing dealt with cross applications. Both parties appeared at the hearing, and confirmed service of documents upon them. Both parties were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party with respect to matters relevant to this hearing.

The tenant applied to cancel a Notice to End Tenancy for Unpaid Rent; a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; authorization to reduce rent; and, recovery of the filing fee.

The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent; authorization to retain the security deposit; and, recovery of the filing fee.

Issue(s) to be Decided

1. Is the tenant entitled to compensation under the Act, regulations or tenancy agreement?
2. Is the tenant entitled to reduce rent payable?
3. Is the landlord entitled to compensation for unpaid rent?
4. Should the Notice to End Tenancy be upheld or cancelled?

Background and Evidence

For several years prior to this tenancy the tenant and his wife were the tenants of the residential property which consisted of the main level and basement at that time. After the tenant and his wife broke up the tenant began living in the basement while the upper unit was rented to new tenants.

It was undisputed that the tenant paid a $325.00 security deposit on March 29, 2010 and the parties signed a tenancy agreement on March 30, 2010 with respect to rental of the basement unit. The tenancy agreement provides that the tenant will pay rent of $650.00 on the 1st day of every month. The tenancy agreement provides that the rent includes the following: stove and oven, refrigerator, carpets and window coverings.

It was also undisputed that on December 29, 2010 the landlord issued the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) indicating the outstanding rent was $595.00 as of December 1, 2010. The landlord provided notations on the Notice calculating the arrears as follows:

| | | |
|---|---|---|
| October 2010 rent | $ 275.00 | |
| November 2010 rent | 650.00 | |
| December 2010 rent | 650.00 | $1,575.00 |
| Less partial payments: | | |
| November 7, 2011 | $ (300.00) | |
| November 24, 2011 | (405.00) | |
| December 9, 2011 | (275.00) | (980.00) |
| Outstanding rent | | $ 595.00 |

The landlord is requesting an Order of Possession and a Monetary Order in the amount of $1,245.00 which is comprised of the unpaid rent of $595.00 as indicated on the 10 Day Notice and unpaid rent of $650.00 for the month of January 2011.

The tenant acknowledged that the partial payments recorded by the landlord are accurate; however, the tenant disagreed with the landlord's position that the tenant was required to pay rent of $650.00 per month. The tenant submitted that the landlord and tenant verbally agreed in October 2010, and in front of a witness, that the tenant's rent would be reduced to $550.00 per month. The landlord acknowledged that he told the tenant the rent would be reduced to $550.00 but claims that this was conditional upon the tenant paying rent on the 1st day of every month. The tenant denied that there was a condition placed upon the landlord's agreement and submitted that rent was reduced as the tenant had not been provided all the services or facilities agreed upon in the tenancy agreement.

The tenant pointed to the services and facilities to be provided to him under the tenancy agreement. The tenant submitted that he still does not have a stove and oven, that the tenant purchased his own refrigerator for $75.00 and the tenant purchased his own carpets which were installed after the tenancy commenced. The tenant submitted that when he took possession of the rental unit it was a concrete shell with a toilet and sink

in the bathroom. Since the tenancy commenced the tenant has made it a liveable space by providing his own refrigerator, installing carpets, a bathtub, kitchen sink, and cupboards, among other things.

The landlord submitted that that he had provided the tenant with a refrigerator; however, the tenant was adamant he had purchased the refrigerator. The tenant described in detail how the tenant helped the landlord load an old, non-working refrigerator in a truck for disposal. The tenant clarified that the landlord did purchase a refrigerator from the tenant but that it was for the refrigerator left in the upper unit by the tenant and his wife.

The landlord did not know whether the tenant was provided with a stove and oven and had to ask the tenant if the tenant had a stove and over during the hearing.

The landlord claimed the tenant had agreed to rent the unit in the condition that it was in and that the landlord had to instruct the tenant to cease making alterations to the unit. The landlord pointed to a term in the tenancy agreement with respect to this prohibition.

The tenant submitted that the landlord added the term concerning alterations to the tenancy agreement after the parties signed the agreement. The tenant further submitted that the tenant was not provided a copy of the agreement until October 2010. The landlord submitted that he gave the tenant a copy of the tenancy agreement when the tenancy commenced and the tenant may have lost his copy. The tenant refuted the landlord's allegation by stating and providing a copy of the tenancy agreement actually given to him by the landlord, which is for a different rental unit.

The tenant claimed that the landlord owes him over $1,400.00 for materials the tenant purchased to make the rental unit liveable. The tenant submitted that the parties had a verbal agreement as follows: the tenant would provide free labour to make the basement unit liveable and the landlord would reimburse the tenant for materials. The tenant explained that he provided free labour in exchange for permission to have a dog and use the garage on the property. The tenant acknowledged that the terms of payment for materials were not specified and that the tenant expected reimbursement by either cash, cheque or deductions from rent otherwise payable by the tenant.

The landlord refuted the tenant's allegations regarding an agreement for the reimbursement of material costs. The landlord submitted there was no such agreement made with the tenant. The landlord also pointed to a document the tenant signed in July 2010 whereby the document indicates that neither party owes money to the other party. The tenant confirmed signing the July 2010 letter, which the landlord prepared,

but clarified that it pertained to a settlement reached for the work done by the tenant on the upper unit laundry room in June or July 2010.

The landlord also pointed to applications for dispute resolution made by both parties on March 9 and March 17, 2010 respectively. Both parties cancelled their respective hearings. The landlord submitted that by agreeing to cancel and settle their previous disputes the landlord lost more than $2,000.00.

I determined that with the March 9, 2010 application the tenant was seeking compensation of $2,280.00 from the landlord for compensation for the flood that occurred in January 2010 under the prior tenancy. The landlord's march 17, 2010 application for $4,640.00 was for unpaid rent and damage to the basement walls. When asked if the tenant had repaired the walls the landlord stated that he did not know. The tenant clarified that the flood that occurred in January 2010 when the landlord was in India and the landlord's son did not know what to do. The tenant submitted that pursuant to discussions with the landlord's son and the landlord, the tenant had dried out the basement and removed mouldy drywall that was a result of the flood. The parties had settled their disputes and recorded such in writing on March 31, 2010.

The landlord also pointed to a previous dispute resolution proceeding held in September 2010 whereby the tenant agreed to pay the landlord rental arrears in order to continue with the tenancy. The landlord submitted that the tenant did not raise the issue of material costs owed to the tenant at that hearing. The tenant claims he did raise the issue but it was not considered further by the Dispute Resolution Officer as the tenant had not submitted supporting evidence.

Evidence provided for this hearing included a copy of the tenancy agreement, 10 Day Notice to End Tenancy, a copy of the letter signed by the tenant in July 2010, a letter written by the tenant of the upper unit, numerous photographs of the rental unit and residential property; the tenancy agreement for another rental unit provided to the tenant by the landlord; and, receipts for materials purchased by the tenant.

Analysis

As the parties were informed during the hearing, my authority to resolve disputes is limited to matters as provided under the *Residential Tenancy Act*. I do not have jurisdiction to resolve disputes related to a contract for services between the parties. A contract for services may be relevant to a residential tenancy dispute where there is an agreement that compensation under a contract for services shall be in form of deductions from rent payments otherwise payable by the tenant.

By the tenant's own testimony, the tenant stated that the form of compensation for the contract for services, if there was one, was not specific and the tenant was of the belief it could have been in any form. This testimony does not satisfy me that the tenant was entitled to withhold rent for materials purchased for the rental unit. Accordingly, I do not consider the terms of any contract for services to be relevant in determining whether the tenant is entitled to compensation from the landlord. The parties are at liberty to resolve their dispute concerning the contract for services, if there was one, in the appropriate forum.

I do find the tenant is entitled to compensation for damage or loss under the Act and the tenancy agreement with respect to the services and facilities agreed upon in the tenancy agreement which were not provided by the landlord.

The tenancy agreement stipulates that the tenant was to be provided a stove and oven and I am satisfied that these have not been provided by the landlord. I find the tenancy has been devalued by $100.00 per month due to a lack of stove and oven. Accordingly, I find the tenant entitled to compensation for 10 months, from March 30, 2010 through January 2011, in the amount of $1,000.00.

I further award the tenant an additional $295.00 for the other services and facilities not provided at the beginning of the tenancy, as described below. I have made this nominal award as the remainder of the services and facilities were installed at various times shortly after the tenancy commenced and I have determined that an award equivalent to the rent owed up to January 2011 is sufficient compensation.

The tenancy agreement provides that the tenant was to be provided with carpets. I am satisfied that the landlord did not supply the tenant with carpets but the tenant installed carpets approximately one month after the tenancy commenced.

The tenancy agreement provides that the tenant was to be provided with a refrigerator. I preferred the tenant's submission that he purchased a refrigerator over that of the landlord's testimony. Since the landlord demonstrated an inability to answer questions about the existence of a stove in the rental unit and repairs to damaged walls, I found the landlord's testimony less reliable than the tenant's. In contrast, the tenant demonstrated a clear description of the condition of the unit, what it was equipped with, and by whom.

I heard that the tenant was not provided with a bathtub or shower until the tenant installed a bathtub. I also heard that the unit was not provided with a kitchen sink until one was installed by the tenant. Section 32 of the Act requires that a landlord provide a

rental unit that is suitable for occupation. I find that a lack of a bathtub or shower facility and kitchen sink is a breach of this requirement.

I do not accept the landlord's submission that the tenant has been previously compensated for the services and facilities not provided to him by way of the hearings cancelled in March 2010. The parties made Application for Dispute Resolution against each other March 9 and 17, 2010 which is before this tenancy commenced so I find those previous applications irrelevant to this dispute. Even if I had considered the cancelled applications relevant to this decision, each party cancelled their respective applications meaning no determination was made as to whether either party was entitled to compensation under the Act. Finally, the parties signed an agreement on March 31, 2010 stipulating that neither party owed the other party any money. For these reasons, I do not find that the tenant was previously compensated for services and facilities not provided by way of the cancelled applications.

The tenant signed a document in July 2010 in which the tenant acknowledged the landlord did not owe him any money. However, this document does not satisfy me that the tenant is not entitled to compensation under the Act for services or facilities that were not provided to him as parties cannot avoid the requirements of the Act by attempting to contract out of the Act.

Similarly, I reject the landlord's position that the tenant is not entitled to compensation because the tenant agreed to rent the unit in the condition it was in. As the landlord was informed during the hearing, parties cannot contract out of the requirements of the Act. Meaning, where the Act requires the landlord to provide certain services and facilities then the party is obligated to comply with the Act and failure to do so may entitle the tenant to compensation. Furthermore, if a tenancy agreement provides that the landlord is to provide specific services and facilities, section 27 of the Act stipulates that the landlord may not terminate essential services and may only terminate other services and facilities with an equivalent reduction in rent.

Upon review of the decision rendered for the hearing the parties had in September 2010 I accept that the tenant had not been awarded a rent reduction as the tenant had not applied for such. However, the tenant's failure to file a cross application for the hearing held in September 2010 does not preclude the tenant from requesting compensation with this application.

**In light of all of the above findings, I have determined that the tenant is entitled to a rent abatement totalling $1,245.00 for the services and facilities agreed upon or required by law which were not provided. I am also satisfied that the landlord is**

**also entitled to compensation of $1,245.00 for rent payable under the tenancy agreement up to an including the month of January 2011. In accordance with section 72 of the Act, I offset the amounts owed to each party by the other party and do not provide a Monetary Order to either party.**

Pursuant to section 65 of the Act, I grant the tenant's request for a rent reduction from future rent payments due to a lack of a stove and oven not yet provided. **I authorize a rent reduction of $100.00 per month for each future month the tenant is without a stove and oven.** Furthermore, upon installation of a functioning stove and oven the landlord must provide the tenant with written notification of the installation and the landlord's expectation that the tenant will start paying full rent for the subsequent month.

With respect to the landlord's request for an Order of Possession I make the following findings. Having heard from both parties, I am satisfied that during this tenancy and the prior tenancy the tenant has performed services on the residential property such as removing flood water and water damaged drywall from the basement, building a laundry area for the upper unit, and improving the basement unit so that it is liveable. I am also satisfied the parties have in the past co-mingled the respective obligations under the tenancy agreements and contracts for services performed by the tenant. Considering the past behaviour of the parties and my finding to completely offset monetary awards in this decision, pursuant with my authority under section 62 I find it to be unconscionable to grant the landlord's request for an Order of Possession. Accordingly, **I cancel the Notice to End Tenancy and dismiss the landlord's request for an Order of Possession.**

**Upon receiving this decision, the tenant is ORDERED to comply with the following conditions:**

1. **The tenant must pay rent in full on the 1st day of every month.**
2. **The tenant must not deduct or withhold any monies from the rent without the landlord's written consent or authority of the Director.**
3. **The tenant is authorized by way of this decision to withhold rent of $100.00 per month until such time the landlord provides the tenant with a functional stove and oven and the landlord provides the tenant with written notification of such.**
4. **The tenant must not make alterations or modifications to the rental unit without the written agreement of the landlord.**

As both parties were partially successful in their applications, each party must bear the cost of filing their own application. Accordingly, I make no award for recover of the filing fee.

Conclusion

The tenancy continues and the tenant has been ordered to comply with four conditions provided in this decision.

The landlord and tenant have each established an entitlement to compensation in the amount of $1,245.00 and I have offset those awards. The tenant is authorized to reduce monthly payments by $100.00 until such time the landlord provides the tenant with a functioning stove and oven and written notification of the installation.

I have refused jurisdiction to hear the dispute concerning materials supplied by the tenant for the rental unit. The parties are at liberty to resolve that dispute in the appropriate forum.

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: January 28, 2011.

Residential Tenancy Branch