

## **DECISION**

Dispute Codes      DRI, CNR, MNDC, RP, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- an order regarding a disputed rent increase pursuant to section 43;
- an order to the landlord to make repairs to the unit pursuant to section 33;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that the landlord's representatives handed the tenants a 10 Day Notice to End Tenancy for \$192.00 in unpaid rent on January 5, 2011. The tenants testified that they handed the landlord's representatives a copy of their dispute resolution hearing package on January 11, 2011. Both parties confirmed receiving these documents and one another's evidence packages. I am satisfied that these documents were served to one another in accordance with the *Act*.

At the hearing, the landlord said that she was only seeking unpaid rent from the tenants; she made no request for an Order of Possession.

### Issues(s) to be Decided

Are the tenants entitled to have the landlord's 10 Day Notice to End Tenancy for Unpaid Rent cancelled? Are the tenants entitled to an order regarding the landlord's rent increase? Are the tenants entitled to a monetary order regarding loss they have experienced as a result of this tenancy? Are the tenants entitled to recover their filing fee for their application from the landlord?

### Background and Evidence

The tenants said that they first moved to this building in September 2004. The tenants entered into written evidence a copy of their February 1, 2007 periodic Residential Tenancy Agreement for the penthouse unit they moved into that date. According to this Agreement, monthly rent was set at \$3,000.00 payable on the first of each month. The

Agreement noted that parking was included with that rent. The landlord continues to hold their \$475.00 security deposit paid on September 15, 2004.

The tenants entered into evidence a copy of the landlord's August 22, 2010 Notice of Rent Increase. In that Notice, the landlords advised that the tenants' new monthly rent would be increased by \$96.00 (i.e., 3.2%) from the previous monthly rental of \$3,000.00 plus parking. This increase resulted in a new monthly rent of \$3,096.00 plus parking as of December 1, 2010. The landlord purchased this property in the summer of 2010. The landlord said that the August 22, 2010 rent increase was the first issued to the tenants since they moved into this rental unit.

The tenants testified that the August 22, 2010 Notice of Rent Increase was not in accordance with the *Act* because the previous landlord sent them a May 26, 2010 email stating that effective June 1, 2010 they would have to start paying an additional \$50.00 charge for parking for their rental unit. They said that they did not contest this increase for parking because they viewed it as part of the allowable 3.2% annual rent increase that the landlord was entitled to receive. However, they objected to what they viewed as a second rent increase within the same year. They asked for a monetary award of \$50.00 per month from June 2010 until the present if the landlord's August 22, 2010 Notice of Rent Increase were considered valid. Conversely, they asked that the landlord only be allowed to obtain a monthly increase of \$46.00 in December 2010, that being the difference between the \$50.00 obtained in June 2010 and the allowable maximum rent increase of \$96.00.

The tenants also applied for an order requiring the landlord to make repairs to their rental unit because they were receiving insufficient heat and their hot water was set too hot. The tenants also maintained that renovations commenced shortly after the landlords purchased this rental property have disturbed their quiet enjoyment of their rental premises.

### Analysis

Pursuant to Section 63 of the *Act*, the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

After turning their minds to compromise, the parties were able to achieve a resolution of their dispute. The parties agreed to settle matters between them on the following terms:

1. The landlord agreed to withdraw the 10 Day Notice to End Tenancy for Unpaid Rent with the effect that this tenancy will continue.

2. The parties agreed that the landlord's August 22, 2010 Notice of Rent Increase establishes the tenants' monthly rent as of December 1, 2010 at \$3,096.00 **with parking included**.
3. The landlord agreed to rebate the tenants \$300.00 for parking charged for the six months from August 2010 until January 2011.
4. The tenants agreed to pay the landlord \$192.00 in outstanding rent owing from December 2010 and January 2011.
5. The landlord agreed to retain ESC to visit the rental unit at a time when the tenants can attend to check the heating sensor installed in the rental unit to ensure that it is functioning properly. The landlord agreed to ensure that the ESC representative discusses the tenants' concerns about heating in the rental unit with the tenants.
6. The landlord agreed that if the tenants remain dissatisfied with the heat in their rental unit after the ESC representative conducts the above-noted inspection the landlord will retain the plumbing company that installed the boiler to check the functioning of the heating system as it affects the tenants' rental unit.
7. The landlord agreed to send its building manager to check the temperature of the hot water in the tenants' rental unit. If the manager's inspection does not lead to a resolution of the tenants' concerns about the high temperature of the hot water for the rental unit and the tenants prepare and submit a Repair Request Form to the building manager, the landlord agreed to send a plumber to visit the site and attend to this problem.
8. The landlord agreed to notify the tenants in the building when renovation work will be conducted on weekends.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties.

### Conclusion

To give effect to the settlement reached between the parties and as agreed during the hearing, I confirm that the monetary issues are to be resolved by the tenants' payment of \$2,978.00 in monthly rent due on February 1, 2011. As of March 1, 2011, the tenants' monthly rent is set at \$3,096.00, which includes parking. The twelve-month anniversary date for this rent increase is December 1, 2011.

The notice to end tenancy is set aside and the tenancy will continue as per the above terms. The tenants must bear the cost of filing this application.

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*.