



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC MNDC RR

Preliminary Issues

After reviewing the Tenant's application for dispute resolution and their documentary evidence, a discussion took place where the Tenants stated their intent was to deal with all the issues during the hearing including the Notice to End Tenancy and their request for monetary compensation. The Landlord confirmed he received the Tenants' evidence.

The Tenants included in their evidence, among other things, a copy of the 1 Month Notice to End Tenancy for Cause and a completed monetary order worksheet along with a hand written statement; therefore the Landlord was made aware that these issues or items would be up for discussion during the hearing. That being said the Landlord would not be prejudiced if the application for dispute resolution was amended.

Based on the aforementioned I hereby amend the Tenants' application for dispute resolution to include a request to cancel a Notice to End Tenancy issued for cause, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to Order the Landlord to make repairs to the unit, site or property, pursuant to # 23 of *Residential Tenancy Policy Guidelines*.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to cancel a Notice to End Tenancy for cause, for a monetary order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, to Order the Landlord to make repairs to the unit site or property, and to allow the Tenants reduced rent for repairs services or facilities agreed upon but not provided.

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 February 24, 2011. The Landlord confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the 1 Month Notice to End Tenancy for Cause been issued in accordance with the Act?
2. If so, has the Landlord met the burden of proof to end this tenancy for repeated late payment of rent?
3. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
4. If so, have the Tenants met the burden of proof to be awarded monetary compensation and reduced rent as a result of that breach?
5. Have the Tenants met the burden of proof to obtain an Order to have the Landlord make repairs to the unit, site or property?

Background and Evidence

I heard undisputed testimony that the parties entered into a verbal month to month tenancy agreement effective September 1, 2010. Rent is payable on the first of each month in the amount of \$1,000.00. On July 1, 2010, \$125.00 was paid towards the security deposit and on or before September 1, 2010 \$375.00 was paid bringing the total security deposit paid to \$500.00.

The Tenants testified they rented the entire house which included a basement suite that had a separate entrance and was completely self-contained except it did not have the wiring for a stove. Tenant (2) was to be living in the basement while Tenant (1) is living on the main floor with his two children. From the onset of the tenancy they had dealt only with the Landlord's Agent as the Landlord resides in another Province.

On October 27, 2010 Tenant (2) woke up in the middle of the night and realized the basement flood. There was approximately three inches of water throughout the entire basement. They called the Agent right away and told her what had happened and she told them she would contact the Landlord. They explained to the Agent that their possessions were ruined and requested that this be fixed. Tenant (2) used his shop vac and sucked up gallons of water. They continued to call the Agent and nothing happened. Then a week later the basement flooded again. They cleaned up as much water as they could and continued to call the Agent daily for almost a month before she gave them the Landlord's telephone number and instructed them to call him. They kept promising to do repairs and then never did so the Tenants took it upon themselves to complete some of the emergency clean up and repairs.

In November 2010 the roof above Tenant (1)'s bedroom began to leak in several places. He had several buckets placed throughout his room to catch the water. After several complaints the Landlord finally had a roofer attend the house on December 7, 2010 to complete only the immediate repairs. He patched the roof above Tenant (1)'s bedroom and did no other repairs. Tenant (1) confirmed that at this point there were no leaks coming through the ceiling that he was aware of.

Tenant (2) described the basement to be about 2/3 under ground level and about 1/3 above ground level with the electrical panel being partly above ground and partly below ground. He stated the water continues to leak into the basement and there is also water leaking directly into the electrical panel. He confirmed that he is a contractor and not a licensed electrician so he has not made any attempts to repair the electrical panel. He stated that he believes the water is coming down the inside of the electrical mast coming off of the power pole and directly inside the electrical panel. The photos support that there is water inside the panel and the panel is corroding and rusting. He works with several electricians and so he gave the Agent the name and phone number of a respected electrical company to arrange for them to come in to complete the repairs. The Agent never called the electrical company.

He is a construction contractor so he completed emergency clean up and repairs. He used two shop vacs to suck up so the water from the basement. He also installed new gutters, drain spouts and redirected the water flow away from the house. The drain spouts were originally going into the perimeter drains which are obviously blocked. There were several cracks in the concrete around the house and sidewalks so he sealed up these cracks with concrete to lessen the amount of water getting into the basement. They provided photographic evidence to support this work that was completed in January 2011 as supported by his invoice to the Landlord in the amount of \$3,412.70. A copy is provided in their evidence.

Despite the emergency repairs Tenant (2) completed, the basement still leaks and there is now mould growing along the base of the walls, because the Landlord continues to put the problems off which has left the basement uninhabitable. Tenant (2) has had to move upstairs to reside with Tenant (1) and his two children until this can be cleaned up and repaired.

Tenant (1) advised that during their discussions with the Agent and Landlord in November 2010, an agreement was reached that the Tenants would be compensated \$1,500.00 for the loss of their possessions, which included their recently deceased mother's keepsakes and water damage to the television and DVD player that were ruined by the water leaks and flood. They were not required to pay the \$1,000.00 rent

for December 2010 and had \$500.00 off of the rent for January 2011, which is why they only deposited \$500.00 for January rent. Because of this verbal agreement the Tenants chose not to take these matters to dispute resolution back in November and did not take photos of their damaged possessions. When they continued to put pressure on the Landlord's Agent to get the repairs completed she told them that she was no longer going to work for the Landlord and then provided them with the Landlord's bank account information so they could deposit their rent directly into his account. The Landlord did not respond to their continued requests so they kept calling. The lack of action on the part of the Landlord caused Tenant (1) to become very upset and he left a message on the Landlord's machine where he was swearing and stating how upset they were that the Landlord was going back on their verbal agreement.

Then they were served a Notice to End Tenancy for unpaid rent. The Landlord later told them the Notice was cancelled and that he was getting someone in to look at the problem. Tenant (1) noted that the Landlord provided evidence that the drainage company did not come until February 9, 2011 and they were only there to provide an estimate. No work has been initiated by the Landlord so they are seeking a reduction of 1/3 of the cost of their rent ($1/3 \times \$1,000.00$) for the months of November, February, March, and all future months until the basement has been repaired so Tenant (2) can move back down there. They request that Tenant (2) to be compensated for completing the emergency repairs. They confirmed the \$1,500.00 was compensation for the loss of their mother's family possessions and damage to the Television and DVD player. They are also seeking to cancel the 1 Month Notice to End Tenancy for Cause. They stated the Landlord is just looking for ways to end their tenancy because he does not want to have to fix the unit.

The Landlord testified that on February 4, 2011, the 1 Month Notice to End Tenancy was personally served to Tenant (1) by a different male Agent, not the female Agent whom the Tenants had been dealing with. He stated the Notice was issued because the Tenants are repeatedly late paying their rent. He stated rent was late as follows: November 5, 2010, nothing paid for December, 2010, January 26, 2011 only \$500.00 was paid, and February 4, 2011, \$1,000.00 was paid. He stated that he instructed his Agent to provide the Tenants with his bank account information around November 6-8th so the Tenants did not have to wait for the Agent to pick up the rent.

The Landlord confirmed that his Agent informed him of the flood. They were unsure of whom to get involved in the repairs. He did arrange to have a roofing company do the roof repairs in December 2010. The Landlord made reference to his Agent's affidavit provided in evidence where she states that she made no arrangements with the

Tenants to short pay their rent, nor does she have the authority to tell the Tenants to withhold their rent.

He stated that he received a phone call from Tenant (1) sometime near the beginning of December where the Tenant went into reading a letter he had written threatening to take him to the rental board. He let the Tenant read his letter and told him he would look into the problem. He then called his Agent to discuss the situation.

He issued a 10 Day Notice to End Tenancy dated February 1, 2011 for rent of \$1,500.00 that was due February 1, 2011. This Notice was served to the Tenants by his male Agent on February 1, 2011 at 4:55 p.m. When I asked the status of this Notice the Landlord advised he waived the 10 Day Notice. When I asked why he said he chose to cancel the 10 Day Notice in favour of issuing the 1 Month Notice.

He advised that he has owned this house since approximately May 2007 and that it was built about 75 or 80 years ago. He stated he paid to have the roof repaired about 1 ½ years ago but did not provide evidence to support this. He is aware of the basement flood issue and thinks the water is coming through the walls. He did have one contractor provide him with an estimate near the beginning of February 2011 and he is now waiting to have a second contractor provide an estimate. He states he attempted to have his contractor attend the unit but that the Tenants have not been answering their phone to make arrangements to let the contractor in. He states he spoke with Tenant (2) around January 26, 2011 and left him the name and number of the contractor who was going to inspect the house to provide an estimate. When the contractor attended no one was there to let him in. He did not provide evidence of this other contractor attempting to access the unit. He had requested that his Agent contact an electrician in the past so he is not sure why she has not been able to find one yet.

I asked the Landlord if his female Agent was still working for him to which he replied "yes, she is still my Agent". He confirms he has never had a notice to enter the unit posted or provided to the Tenants in writing. He has not attended the rental unit himself as he lives and works in another province. He confirmed that repairs have not yet been initiated.

A discussion followed whereby I gave the participants an opportunity to settle this matter. After a short period of time it was evident that the parties were too far apart to consider a settlement agreement at this time.

Tenant (1) admitted to swearing on the Landlord's answering machine during the one message and stated it was because he was so upset that the repairs were not getting

completed. He questioned the Landlord's testimony about not being able to find an electrician when they gave his Agent the name and phone number of a credible electrician that she has never contacted. He also pointed out that he is on income assistance due to a disability so he is home all day long and no contractor ever attended the unit and never contacted them. He stated that they just want this fixed so they do not need to have to deal with this problem. Tenant (2) and the Legal Advocate had nothing further to add.

The Landlord had nothing further to add.

Analysis

I have carefully reviewed and considered all of the testimony and evidence before me.

A significant factor in my considerations is the credibility of the Landlord. I am required to consider the Landlord's evidence not on the basis of whether his testimony "carried the conviction of the truth", but rather to assess his evidence against its consistency with the probabilities that surround the preponderance of the conditions before me.

The Landlord states the 10 Day Notice was cancelled in favour of a 1 Month Notice which in itself is questionable. I find it unreasonable and unlikely that the Landlord would cancel a 10 Day Notice when it could end the tenancy within 10 days and provide an opportunity to seek a monetary order, "in favour of" issuing a Notice that would take 30 days to end the tenancy with no opportunity to seek a monetary order for the unpaid rent. Furthermore, the Landlord made no attempt to dispute the Tenants' testimony pertaining to them having a conversation and making an agreement with him about reduced rent. He only spoke about the Agent's affidavit and how she states she did not have the authority to enter into such an agreement. Therefore, I favour the evidence provided by the Tenants and accept, on a balance of probabilities, that there was a discussion or agreement pertaining to the December and January unpaid rent for compensation for their loss of personal possessions which were damaged by the flood.

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenants in a manner that complies with the Act.

After careful consideration of all the evidence presented to me, and having found above that there was a discussion or agreement pertaining to the unpaid rent for December 2010 and January 2011, I find the Landlord provided insufficient evidence to prove that he had valid reasons for issuing the 1 Month Notice to End the tenancy for repeated late payment of rent, and the Notice is hereby cancelled.

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 to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Section 32(1) of the Act provides a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. Section 32(5) states a landlord's obligations under subsection (1) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Section 33 (3) of the Act provides a tenant may have emergency repairs made only when (a) emergency repairs are needed; (b) the tenant has made at least 2 attempts to telephone the person identified by the landlord as the person to contact for emergency repairs; and (c) following those attempts, the tenant has given the landlord a reasonable time to make the repairs.

The evidence supports the basement has been flooding since October 27, 2010, the Tenants made numerous calls to request repairs the Agent and Landlord, and the Landlord has not initiated any cleanup, remediation or repairs in contravention of section 32 of the Act. The Landlord has however acquired one quote for repair. Waiting five months before initiating repairs is not a reasonable amount of time. Therefore I find the Landlord continues to be in breach of Section 32 of the Act, as listed above, and the Tenants were within their right under Section 33 of the Act to conduct emergency repairs.

Tenant (2) performed emergency cleanup immediately following each flood and completed emergency repairs up to mid January 2011 for which he has submitted an invoice in the amount of \$3,048.38 plus HST. I accept that Tenant (2) spent approximately 18 hours of labour in cleaning up water from the basement and that he provided additional labour and materials to install gutters and eaves trough materials to re-route water away from the house. He also sealed cracks in the concrete sidewalks, around the house, and did work on the roof. I note that the Tenant did not record a HST number on his invoice, did not list an hourly rate for his labour costs, and did not provide evidence to support proof of purchase for the two shop vacs or eaves trough materials. Therefore, in accordance with section 67 of the Act, I award Tenant (2) an amount of \$680.00 for labour (34 hours @ \$20.00 per hour) plus \$210.00 for materials and equipment for a total amount of **\$890.00**, as reimbursement for the emergency repairs.

The Tenants have applied for an additional \$499.00 as compensation for the loss of a stereo system and ice maker; however they did not provide evidence to support the original costs of these items or that they were replaced after they were damaged. Therefore I find the Tenant's provided insufficient evidence to support their claim and have not met the test for damage or loss, as listed above, therefore I dismiss their claim of \$499.00 without leave to reapply.

Section 65(1)(f) of the Act states that without limiting the general authority in section 62(3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord has not complied with the Act, the regulations, or a tenancy agreement, the director may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

As mentioned above, the Landlord has breached Section 32 of the Act by failing to take action to cleanup, remediate, and repair the damage caused by the basement flooding. This breach has caused the Tenants to lose 1/3 of the value of their tenancy agreement because they no longer have use of the basement and Tenant (2) now has to reside upstairs until the damage has been remediated and repaired. Therefore, I find the Tenants are entitled to rent abatement in the amount of \$333.35 for each of the months of November 2010, February 2011, and March 2011 for a total rent abatement of **\$1,000.05**. (Compensation has already been received for December 2010 and January 2011).

The Landlord is hereby ordered to hire a licensed electrician to inspect and conduct required repairs to ensure the electrical panel and electrical wiring in the house meets the Provincial Health and Safety Authority standards, no later than **March 31, 2011**.

The Landlord is hereby ordered to hire a professional restoration company, who are experienced in repair and remediation of flood damage, to inspect and remediate the water damage and mold in the basement, no later than **April 15, 2011**.

The Landlord is hereby ordered to hire a contractor of his choice to repair the leaky basement no later than **May 15, 2011**.

In addition to the rent abatement, I further find the Tenants are entitled to future rent reductions in the amount of **\$333.35** per month until such time as the Landlord has completed the above listed repair orders and has made application to the *Residential Tenancy Branch* and has been granted an Order to have the rent returned to the full amount of \$1,000.00 per month.

Monetary Order – The Tenants have been awarded the following monetary compensation:

Emergency repairs conducted by Tenant (2)	\$890.00
Rent Abatement, Nov., Feb., and Mar (3 x \$335.35)	1,000.05
Reduced Rent for April 2011	335.35
Reduced Rent for May 2011	335.35
Total Tenants' compensation up to May 1, 2011	\$2,560.75

I HEREBY ORDER the Tenants to deduct the monetary compensation from their April, May and June 2011 rent as follows:

Month	Rent Due	Amount deducted	Amount to be paid by the Tenants
April 1, 2011	\$1,000.00	\$1,000.00	NIL
May 1, 2011	\$1,000.00	\$1,000.00	NIL
June 1, 2011	\$1,000.00	\$560.75	\$439.25

If the Landlord fails to comply with the date requirements of my Orders and he has not been issued an Order by the Residential Tenancy Branch by June 1, 2011, the Tenants will be at liberty to continue to deduct \$335.35 from the rent payable from June 1, 2011 onward, until the Order is granted to the Landlord. For example, if on June 1, 2011, the Landlord has not been issued the Order to put rent back at \$1,000.00 then the Tenants

would pay \$103.90 on June 1, 2011 (\$433.25 - \$335.35) and for July 1, 2011 they would pay \$664.65 (\$1,000.00 - \$335.35) and so on until the 1st of the month following the month in which the Landlord is granted the Order to resume charging \$1,000.00 per month.

Conclusion

In accordance with section 62 of the Act, I HEREBY ORDER:

The Landlord is to hire a licensed electrician to inspect and conduct required repairs to ensure the electrical panel meets the Provincial Health and Safety Authority standards, no later than **March 31, 2011**.

The Landlord is to hire a professional restoration company, who are experienced in repair and remediation of flood damage, to inspect and remediate the water damage and mold in the basement, no later than **April 15, 2011**.

The Landlord is to hire a contractor of his choice to repair the leaky basement no later than **May 15, 2011**.

The 1 Month Notice to End Tenancy issued February 4, 2011, is HEREBY CANCELLED and is of no force or effect.

The Tenants are HEREBY ORDERED to reduce their rent, as noted above, until the first day of the following month in which the Landlord receives an Order from the Residential Tenancy Branch authorizing him to increase the rent back to \$1,000.00 per month.

The Tenants are HEREBY ORDERED to co-operate with the Landlord and his contractors to ensure they are allowed access to the rental unit to complete the repairs within the required timeframes.

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: March 11, 2011.

Residential Tenancy Branch