



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MT, DRI, CNR, MNDC, MNSD

Introduction

This matter dealt with an application by the tenants to cancel a Notice to End Tenancy for Unpaid Rent, for a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, for the return of their security deposit and to dispute an additional rent increase. The tenants also applied for more time to cancel the 10 Day Notice to End Tenancy however this is not required as they did file their application within the five allowable days and this section has therefore been withdrawn.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and sent by registered mail to the landlord. The landlords' agent confirmed receipt of these documents and the tenant's evidence. The tenants confirmed receipt of the landlord's evidence. The hearing was originally scheduled to take place on March 02, 2011 but due to the landlords agent illness both parties agreed to an adjournment. The hearing was reconvened to today's date.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Are the tenants entitled to cancel the 10 day Notice to End Tenancy?
- Has there been an additional unauthorised rent increase?

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to the return of their security deposit?

Background and Evidence

Both parties agree that this tenancy for this unit started on June 18, 2010. The tenants paid a security deposit of \$300.00. The tenants testify that they had a verbal agreement that rent for this unit would be \$600.00 per month and the landlords' agent testifies that rent for this unit is \$900.00 per month. Rent is due on the 1st of each month.

The landlords' agent testifies that the tenants owe rent of \$3,400.00. She states the tenants paid \$900.00 on September, 01, 2010 and paid \$600.00 for October, November and December, 2010. The landlords' agent states the tenant paid \$200.00 in January and failed to pay rent for February or March, 2011. The total of outstanding rent is now \$3,400.00. The landlords issued the tenants with a 10 Day Notice to End Tenancy on February 08, 2011 which states the tenants owed rent of \$2,500.00 and must either pay the outstanding rent within five days, or dispute the Notice or the tenancy will end on February 18, 2011.

The tenants testify that the male tenant lived originally in another one bedroom unit and paid \$600.00 a month rent. He had some trouble with his neighbouring tenants and the landlords asked him to move to this two bedroom unit which was \$900.00 per month. The tenant testifies that he told the landlord he could not afford \$900.00 a month rent and as the landlord wanted him to move into this unit he agreed the tenant could pay \$600.00 a month as per his previous agreement. The tenants state the \$900.00 they paid in September, 2010 was \$600.00 for September's rent and \$300.00 towards rent for January, 2011 as the tenant had been given some money to help with rent just after Christmas. The tenants' testify that therefore they only paid \$200.00 in January as the remaining \$300.00 had already been paid.

The tenants testify that they gave the landlord a Money Order in the landlord's name (copy provided in evidence for \$216.18). They testify this was left in the landlord's mail slot in the

office on January 27, 2011. Contained within this envelope with the money order were receipts for a broken window the tenants had to have repaired as the landlords had failed to repair it before the start of their tenancy. This receipt came to a total cost for labour and some fitting materials of \$483.20. The remaining \$100.00 from Money Order was for the remainder of rent for January, 2011. The tenants testify that with the fact that their rent was only \$600.00 per month when the 10 Day Notice was served upon them in February 08, 2011 they did not owe any rent. They agree they have not yet paid rent for March and have not received a 10 Day Notice pertaining to this at this time. The tenants testify that they asked the landlords for a written tenancy agreement at the start of the tenancy but they did not complete one until November, 2010 and then it was only in the female tenants name so they refused to sign it.

The tenants agree that on the receipt for the window replacement cost the owner of the company has included a sum of \$27.55 which he has charged for meals. The tenants state that this was the total cost for the window replacement and therefore the landlord should take this sum from their rent for February as it was an emergency repair the landlord failed to complete within a reasonable time.

The tenants seek to recover \$2,500.00 from the landlords in compensation because they lost the use of one bedroom in their unit because of the broken window. The tenants' testify that the new window was outside and they requested the landlords to replace the broken window two weeks after they moved into the unit. There was also another broken window in the kitchen which the landlords did eventually repair on June 19, 2010. The tenants' testify the landlords were given every opportunity to repair the bedroom window as it was an emergency repair due to the security factor, bugs entering their unit and a loss of heat. It was covered with a plywood board but that had two inch gaps around the sides. The tenant's state that they eventually had the window replaced themselves on January 24, 2011. This was seven months after the start of their tenancy and provided the receipt to the landlord in lieu of rent for February. The female tenant has provided a copy of a condition inspection report she completed at the start of the tenancy because the landlords refused to do one or sign the one completed by her. This report details the broken windows. The

tenants have also provided photographic evidence of the broken windows and other repairs and cleaning required in the unit.

The landlords' agent testifies that the landlords did not receive the money order the tenants' state they put in the landlords mailbox.

The tenants states this money order was in the landlords name and could not be cashed by a third party. They state when one of the landlords came to collect rent in February he told the tenants he did not receive a money order before the tenants had told him there was one left in the envelope in his mail slot. The tenants argue that the landlord could not have known there was a money order in that envelope if he had not seen it there. He also later denied receiving the envelope at all but has details about the repair receipt. The tenant's state they went back to the Western Union Office where they obtained the money order and have provided a tracking number for the order which they state shows it has not been cashed yet. They state they cannot do any more as the money order was in the landlord's name.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the tenants claim for compensation for the loss of the use of a bedroom due to the landlords failure to repair a broken window for over seven months; The tenants have provided sufficient evidence to show that this window was broken before their tenancy started, they have also provided sufficient evidence to show that the landlords were informed of this and were aware that a repair must be made to the window. The tenants argue they could not use the bedroom for seven months during their tenancy as a bedroom and I find therefore they are entitled to some compensation. The tenants have claimed \$2,500.00; however, I find this amount to be excessive and have reduced their claim to \$100.00 per month to the sum of **\$700.00** pursuant to s. 67 of the *Act*.

With regard to the 10 Day Notice for unpaid rent. As the landlords have not appeared at the hearing and their agent was not privy to the conversation between the landlord and tenant

at the start of the tenancy concerning the rent for this two bedroom unit; and as the landlords is in breach of s. 13 of the *Act* by not providing a tenancy agreement in writing at the start of the tenancy, I find there is no evidence to show that rent for this unit is \$900.00 per month and I am prepared to accept the tenants evidence that rent is \$600.00 per month. I also refer both parties to s. 33(1)(b) of the *Act* which states an emergency repair is a repair that is necessary for the health or safety of anyone, or for the preservation or use of the residential property. s. 33 (5) of the *Act* states a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for these amounts from the landlord and provides a written account of the emergency repair and a receipt for the amount claimed (my interpretation). Consequently, it is my decision that the tenants gave the landlords sufficient time to repair the bedroom window and they failed to do so and they were therefore entitled to have the window repaired themselves under s. 33 of the *Act*. I also find the tenants have provided the landlords with an account of the repair and the receipt and have deducted this sum from the amount owed for February, 2011 rent payment. I have also looked at the evidence presented concerning the money order and find I prefer the arguments made by the tenant that this money order was put in the landlords mail slot along with the receipt for the window repair. It is therefore the landlord's responsibility to ensure his mail slot is secure and as the money order is in the landlords name they must take any necessary steps to retrieve this. Therefore, it is my decision that at the time the 10 Day Notice to End tenancy was served to the tenants there was no outstanding rent owed and the Notice is cancelled.

The landlords are at liberty to serve the tenants with a new 10 Day Notice if the tenants have failed to pay rent for March, 2011.

With regard to the tenants claim to dispute an additional rent increase; as no rent increase has been made by the landlord in accordance with s.42 of the *Act* I dismiss this section of the tenants claim with leave to reapply.

With regard to the tenants claim for the return of their security deposit; as the tenancy will continue at this time this section of the tenants claim is premature and is therefore

dismissed with leave to reapply if the tenancy ends at a later date and the landlord does not return the security deposit in accordance to the *Act*.

Conclusion

The tenant's application is allowed. The 10 Day Notice to End Tenancy for Cause dated February 08, 2011 is cancelled and the tenancy will continue.

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$700.00**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

The remainder of the tenants' application is dismissed with 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: March 23, 2011.

Residential Tenancy Branch