



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord – OPR, OPC, MNR, MNSD, MNDC, FF
 Tenant – CNR, CNC, MNDC, OLC, ERP, RP, RR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord seeks an order of possession and the tenants seek to cancel two notices to end tenancy; a monetary order; an order to complete repairs and emergency repairs and to reduce rent for repairs not provided.

The hearing was conducted via teleconference and was attended by an agent for the landlord and the female tenant.

At the outset of the hearing I clarified with the landlord's agent that the party named on the landlord's Application was in fact the landlord's agent and not the landlord but that the landlord was correctly named in the tenant's Application. I have amended the landlord's Application to reflect the correct landlord's name.

The tenant stated during the hearing that the landlord had failed to provide copies of all evidence, specifically copies of a returned cheque from the tenant's bank. The landlord testified that he served the documents to the male tenant.

While the tenant raised concern that the evidence had not been properly served, in the absence of any testimony from the male tenant contradicting the landlord's statement, I accept the evidence for consideration.

I requested both parties to provide additional evidence to the other party and to this hearing no later than the end of business on Friday, July 29, 2011. I requested the landlord provide receipts for repairs completed. I requested the tenant provide confirmation from her banking institution regarding the clearance of a cheque dated March 2, 2011 in her evidence.

Both parties provided their additional evidence before the end of business on Thursday, July 28, 2011.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and/or for cause; to a monetary order for unpaid rent; for money owed; for all or part of the security deposit and to recover the filing fee from the tenants for the

cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

In addition it must be decided if the tenants are entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to cancel a 1 Month Notice for Repeated Late Payment of Rent; to a monetary order for compensation for damage or loss; for an order to have the landlord comply with the Act; to make emergency repairs; to make repairs; to allow the tenant to reduce rent and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 33, 46, 47, 67, and 72 of the *Act*.

Background and Evidence

The tenancy began in December 2005 as a month to month tenancy for a monthly rent of \$1,200.00 due on the 1st of each month and a security deposit of \$600.00 was paid. In my previous Dispute Resolution Decision dated February 16, 2011, rent was reduced to \$1,000.00 per month until such time as the landlord obtained an order from a Dispute Resolution Officer confirming repairs that had been ordered had been completed.

In that decision I ordered the landlord to:

1. Ensure all repairs are complete for the furnace;
2. Remove the old oil tank;
3. Determine the cause and then effect the repairs required to stop all leaking from the roof;
4. Repair a broken window;
5. Provide the tenants with an emergency contact number.

During the hearing the tenant confirmed the broken window had been repaired; the old oil tank had been removed and that the new old tank was connected. The tenant has doubts that the tank was connected properly, but provided no evidence confirming whether or not it was. The tenant could not confirm if the landlord had fixed the roof.

The landlord testified that all work had been completed and as noted above the landlord provided a receipt for all repairs completed by a third party, including repairs made to the broken window; the roof shingles and all oil tank connections.

The tenant testified that after the decision of February 16, 2011 the landlord provided the name of a previous agent of the landlord as the emergency contact number but that person stated he had nothing to do with the landlord any longer. During the hearing the landlord's agent in attendance provided his number as an emergency contact number.

As to the payment of rent the landlord outlines that after taking into account the \$1,550.00 granted to the tenants in my February 16, 2011 decision and the \$50.00 granted to the tenants in a separate Dispute Resolution Decision dated March 21, 2011, the tenants still owe the landlord \$1,200.00 for rent, based on the following:

Description	Debit	Credit
March 2011 rent	\$1,000.00	Dishonoured cheque
April 2011 rent	\$1,000.00	Dishonoured cheque
May 2011 rent	\$1,000.00	\$1,000.00 payment
June 2011 rent	\$1,000.00	\$1,000.00 payment
July 2011 rent	\$1,000.00	\$200.00 payment
Total	\$5,000.00	\$2,200.00

The landlord then applied the \$1,600.00 deductions ordered by previous decisions to reduce the balance of \$2,800.00 owed to obtain a total owed of \$1,200.00.

The tenants had calculated the payments as follows:

Description	Debit	Credit
March 2011 rent	\$1,000.00	\$1,200.00 payment
April 2011 rent	\$1,000.00	Dishonoured cheque
May 2011 rent	\$1,000.00	\$1,000.00 payment
June 2011 rent	\$1,000.00	\$1,000.00 payment
July 2011 rent	\$1,000.00	\$200.00 payment
Total	\$5,000.00	\$3,400.00

The tenants then applied the \$1,600.00 deductions ordered by previous decisions to reduce the balance of \$1,600.00 owed to obtain a nil balance owing.

The tenants also submitted into evidence a letter sent to the landlord on June 6, 2011 outlining their understanding of the current account balance with the landlord and at that point they had determined that they had owed the landlord \$4,000.00 for March, April, May, June 2011 less \$1,600.00 (as above) for a total of \$2,400.00 but that they had paid the landlord \$3,200.00 and felt they had a balance owing to the tenants of \$800.00.

The tenants state they were unaware of the cheque for March 2011 was not honoured by the bank and that the landlord failed to inform the tenant that this had occurred, even after they provided the landlord with their letter of explanation on June 6, 2011. After obtaining the additional evidence I had requested, the tenants acknowledge they had miscalculated and now agree they owe the landlord \$1,200.00.

The landlord has tried to end this tenancy on two previous occasions by issuing 2 Month Notices to End Tenancy for Landlord's Use of Property. On both occasions the landlord's notices were cancelled through Dispute Resolution decisions. Even in this hearing the landlord's agent still contends that they need the tenants to vacate so they can complete renovations.

Analysis

While the tenants now acknowledge they owe the landlord \$1,200.00, I find that the understanding between the two parties as to how much rent was owed and when was confused by each parties interpretation of the previous Dispute Resolution decisions and the failure on the landlord's part to communicate with the tenants regarding any dishonoured cheques.

Residential Policy Guidelines state that at least 3 late payments of rent during a tenancy is sufficient cause to end the tenancy. I find that at least two of the late payments for rent in this tenancy result from this confusion on behalf of both parties and lack of communication on the part of the landlord. As such, I find the landlord has failed to establish repeated late payment of rent as a cause to end the tenancy and I dismiss this portion of the landlord's application.

I accept that the tenants tried to provide the landlord with an explanation of what they felt the landlord still owed them resulting from those previous decisions on June 6, 2011. I also accept the landlord did not discuss the returned cheque from March 2011 with the tenants either before or after the tenants provided the landlord with their explanation of June 6, 2011.

As such, I find the landlord had a duty to inform the tenants, prior to the payment of rent for July 2011, they disagreed with the tenant's calculations and expected \$1,200.00 for July 2011 and for the arrears calculated at that time.

While the history of the tenancy indicates that the landlord repeatedly fails to communicate with the tenant on any issue, I cannot determine if the landlord's lack of communication with the tenant was intentional or simply negligent.

However, I find the landlord's failure to communicate with the tenants, especially after the tenants provided an explanation to the landlord that they expected more compensation caused the tenants to be in a position that would give the landlord cause to end the tenancy for unpaid rent.

As such, I find the landlord cannot hold the tenants responsible for the non-payment of rent and I dismiss the portion of the landlord's application seeking an order of possession for unpaid rent.

I accept the tenant's acknowledgement and the landlord's evidence that shows the tenants owe the landlord \$1,200.00 in rent as outlined in the first table above. As the landlord did not provide a copy of a tenancy agreement, I cannot determine if the agreement allows for the landlord to collect late payment or bank charges and I dismiss this portion of the landlord's application.

I also accept that the landlord has completed all the repairs as ordered in the February 16, 2011 Decision and I order that future rent for this rental unit beginning immediately after the date of this decision will return to the original \$1,200.00 per month.

As to the tenant's claim for \$3,000.00 as compensation for the disruptions and interference the landlord has caused to the tenants in the last 6 months of this tenancy, I accept that the landlord has been trying, unsuccessfully, to end the tenancy for their own purposes; that the landlord has provided no follow up with the tenants on any matters related to the previous orders, including providing an emergency contact number until this hearing; and that the landlord has not communicated with the tenants regarding any rent owing either by malicious intent or negligence.

As a result, I find the landlord has failed in their obligations under Section 28 that entitles the tenants to quiet enjoyment including, but not limited to, rights to reasonable privacy and freedom from unreasonable disturbance. Based on the impact on the value of the tenancy itself, I find that a rent reduction of \$100.00 per month for the period of 6 months or a total of \$600.00 is reasonable compensation for this breach of the covenant of quiet enjoyment.

Conclusion

As I have found the landlord's notices to end tenancy to be ineffective, I find the tenancy to be in full force and effect at the monthly rental of \$1,200.00 due on the 1st of each month. If the parties receive this decision after August 1, 2011, the landlord must allow the tenant a reasonable amount of time to pay the additional \$200.00 for the month of August 2011.

As both parties have been partially successful in their respective applications, I dismiss each party's claim to recover the filing fee for their applications.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$600.00** comprised of \$1,200.00 rent owed less \$600.00 for compensation for unreasonable disturbance. I order the landlord may deduct the security deposit held in the amount of \$600.00 in total satisfaction of this claim.

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: July 28, 2011.

Residential Tenancy Branch