

## **DECISION**

Dispute Codes      CNL, MNDC, OLC, ERP, LRE, RR

### Introduction

This is an application filed by the Tenant for an order to cancel and set aside a notice to end tenancy for Landlord's use of the property, a monetary order request for compensation for loss damage or loss under the Act, regulation or tenancy agreement, make emergency repairs for health or safety reasons, to suspend of set conditions on the Landlord's right to enter the rental unit and to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

Both parties attended the hearing by conference call and gave testimony.

### Issue(s) to be Decided

Is the Tenant entitled to an order to cancel/set aside the notice to end tenancy for Landlord's use?

Is the Tenant entitled to a monetary order for compensation?

Is the Tenant entitled to an order for the Landlord to comply?

Is the Tenant entitled to an order for emergency repairs?

Is the Tenant entitled to an order to allow the Tenant to reduce rent?

### Background and Evidence

This Tenancy began on August 1, 2011 on a month to month basis. The monthly rent is \$700.00 payable on the 1<sup>st</sup> of each month and a security deposit of \$350.00 was paid.

The Tenant states that the Landlord has served the notice to end tenancy for Landlord's use in reprisal to the Tenant's application on Residential Tenancy Branch File No. 781431 where a monetary order for compensation was awarded to the Tenant. The Tenant is challenging the Landlord's "good faith" in issuing this notice. The Landlord stated in his direct testimony that his 23 year old daughter would move in to the rental unit. The Landlord stated that the upstairs unit comprises of 3 bedrooms, 1 for him and his spouse, 1 bedroom for a younger male child and 1 bedroom shared by his 23 year old female daughter and an older son.

The Tenant refers to a RTB Decision File No. 781431 made on November 8, 2011 by M. Matoul, where the Tenants received an order for the Landlord "to seal the walls, repair any water leaks, to exterminate rodents and insects and to provide proper heating and power no later than December 12, 2011. If the Landlord fails to comply with the above mentioned orders within the specified time frame, the tenants are at liberty to make application for further compensation." The Tenants state that the Landlord has failed to comply with any of these orders. The Landlord has filed no evidence and provided no explanation for this. The Tenant seeks administrative penalties against the Landlord for not complying with previous order made. I advised the Tenant that a request for the imposition of administrative penalties outlined in the Act would need to be addressed to the Head Office of the Residential Tenancy Branch for the Director as this authority is delegated by the Director and I have not been so delegated.

The Tenant seeks monetary compensation of \$4,200.00 equalling to 6 months of rent. The Tenant states that this request is for the issues of rats on the premises, noise made by the Landlords upstairs and having called the police to file complaints against them. The Tenants state that the main issue is the pest control of rats. The Tenant also states that there was no heat from the period of December 26, 2011 to January 2, 2012. The Tenant stated in her direct testimony that no notice for this loss of heat was given to the Landlord and that she used the oven to heat the premises. The Landlord disputes this stating that the heating system was old and that late at night the Tenant was complaining of noise from the heater. It was agreed by both parties that the Tenant has an off only switch in the basement unit and would turn it off at midnight and that the Landlord would turn it back on during the day. The Tenant states that the Landlord failed to turn on the heat during the day. The Landlord has confirmed that there is a thermostat control upstairs and that the switch in the basement is only for turning off the heater. Both parties agreed that the heater provides sufficient heat when turned on.

The Tenant seeks an order for the Landlord to comply with the Act and make repairs in relation to the order already given on RTB File No. 781431 referred to above.

The Tenant states that as the Landlord has failed to comply with orders made previously that the Tenants be allowed to continue reducing their rent. The Landlord disputes this stating that the Tenant failed to allow the Landlord to attend to assess the repairs required. The Tenant disputes this stating that no proper notice was given.

### Analysis

As both parties have attended the hearing and have made detailed reference to the Tenant's evidence, I am satisfied that the Landlord has been properly served with the notice of hearing and evidence packages. The Landlord has filed no evidence.

Based upon the direct testimony of both parties, I find on a balance of probabilities that the Landlord has not established his claimed reason for Landlord's use of the property. The Residential Tenancy Branch Guidelines #2 state, "If a "good faith" intent of the Landlord is called into question, the burden is on the landlord to establish that he/she truly intends to do what the landlord indicates on the Notice to End, and that he/she is not acting dishonestly or with an ulterior motive for ending the tenancy as the landlord's primary motive." As such, the notice to end tenancy dated November 29, 2011 for Landlord's use of the property is set aside and the Tenancy shall continue.

I find that the Tenant has failed to establish a claim for the \$4,200.00 monetary request. The Tenant states that there has been no monetary losses suffered by the Tenants and is only seeking aggravated damages. The Tenant has provided no details and stated that the amount sought was an arbitrary one and not based on any losses. I dismiss this portion of the Tenant's claim.

I decline to make an order for the Landlord to comply with the Act and make repairs as this has already been made on November 8, 2011 on RTB File No. 781431. Those orders made are still in effect and the Landlord is to comply.

Although not detailed in the Tenant's application to be allowed to reduce rent for repairs not made. I find based upon the decision made November 8, 2011 that the Tenants be allowed to reduce rent for January 2012. I order that the Tenants may reduce rent of \$100.00 for a one time reduction of \$100.00 for February 2012 rent. As stated in the previous Decision, if the Landlord fails to comply with the orders made, the Tenants are at liberty to make application for further future compensation if these repairs are not.

Section 29 of the Residential Tenancy Act states,

#### **Landlord's right to enter rental unit restricted**

- 29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

The Landlord must comply with this Section of the Act. Upon being given proper notice the Tenant shall not prohibit access.

### Conclusion

The Landlord's notice to end tenancy dated November 29, 2011 is set aside and the Tenancy shall continue.

The Tenant is allowed to reduce rent one time of \$100.00 for the month of February 2012.

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 10, 2012.

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Residential Tenancy Branch