



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, RP, RR, FF

Introduction

This hearing was convened by way of conference call in repose to the tenants application to cancel a One Month Notice to End Tenancy for unpaid rent; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to make repairs to the unit, site or property, for an Order allowing the tenants to reduce rent for repairs services or facilities agreed upon but not provided and to recover the filing fee from the landlord for the cost of this application.

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 January 14, 2012. Mail receipt numbers were provided in the tenants' documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenants appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Are the tenants entitled to cancel the One Month Notice to End Tenancy for cause?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to an Order for the landlord to make repairs to the unit, site or property?
- Are the tenants entitled to reduce their rent for repairs?

Background and Evidence

The tenants testify that their tenancy started on May 25, 2002. Their monthly rent is \$850.00 but the tenancy agreement does not specify on which date this should be paid and it contains no information about the rent and is unsigned by the landlord. This is now a month to month tenancy.

The tenants' testify that the landlord served them with a 10 Day Notice to End Tenancy on January 05, 2012. The tenants testify that they paid the outstanding rent within the five allowable days on January 09, 2012. The tenants testify that the landlord also served them with a One Month Notice to End Tenancy for cause however a copy of this Notice has not been provided in evidence by either party.

The tenants' testify that throughout their tenancy the landlord has failed to make the required repairs to the rental unit. The tenants' state they would contact the landlord about repairs when they became necessary but the landlord would always say he had no money to make the repairs. The tenants' testify the City Ordered the landlord to put an electrical panel in their upper unit because of the illegal suite in the basement. The landlord did comply with this and an electrician came to rewire the tenants unit for this panel. However, the electrician did not replace the dry wall in the tenants unit after he completed his work and the walls were open to the electrical box, the wiring, the wiring pipes and the insulation for four months. The tenants states eventually they purchased

the necessary drywall, mud and tape and the male repaired the walls himself. The tenants state the landlord was aware the holes had been left open as the electrician told the tenant that he had put it in his report to the landlord.

The male tenant testifies he original spoke to the landlord and informed him that the cost of this work would be \$500.00. The work actual came in at \$478.00 and the tenant has sent a copy of his invoice for this work with his application but the landlord had failed to reimburse the tenant for this work. The tenants therefore seek to recover the cost of this work to the sum of \$478.00.

The tenants' testify that the balcony has not been repaired since they first complained in 2004. The tenants' state they told the landlord that the male tenant could do this repair and they sent the landlord an estimate for the repair but the landlord said he had no money to repair the balcony. The tenants have provided photographic evidence showing the nature of the repair and state the wood in the balcony is rotten. A hole went through the balcony and the tenants have had to cover this with plywood to prevent them having an accident.

The tenants testify that the ceilings in the master bedroom and one other bedroom have leaked and there are stains around the light fixtures. The landlord had three different roofing companies come and inspect the roof and the landlord was told the roof needed to be replaced however the landlord has still failed to do this work.

The tenants' testify that the patio door does not close properly and the tenants have to use duct tape to keep the door closed. The tenants also testify that the windows are made of aluminum which creates mildew and mould because of the excessive condensation. The tenants' testify that they have to keep cleaning this off the windows and repaint them.

The tenants' testify that a baseboard heater in the main room does not work. The tenants testify that they had to disconnect the heater after it created a spark in order to prevent a fire.

The tenants testify that the outside of the house is in need of painting. All the paint is peeling off which makes the house look unkempt.

The tenants' testify that they have mentioned the repairs to the landlord but he just shrugs them off and only contacts the tenants when he wants the rent. The tenants seek to reduce their rent until the landlord makes the repairs to the property.

Analysis

The landlord did not appear at the hearing to dispute the tenants claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenants documentary evidence and affirmed testimony before me.

With regards to the One Month Notice to End Tenancy, This Notice has not been provided in evidence and the landlord has not appeared to give testimony as to any reasons given on this Notice. Therefore, the One Month Notice to End Tenancy is cancelled. The tenants have not applied to cancel the 10 Day Notice to End Tenancy because the tenants paid the outstanding rent within the five allowable days which effectively cancels the 10 Day Notice.

With regards to the tenants claim for money owed or compensation for damage or loss; I find from the testimony of the tenants and the documentary evidence provided that the tenants did incur a loss after they had to repair the walls in the unit to cover the electrical work done by the landlords electrician which had left exposed wiring, the electrical panel box and insulation in the tenants unit. The tenants' have meet the burden of proof in this matter and therefore the tenants have established their claim to

recover their costs for this work including the cost of materials and the tenants labour. The tenants will receive a Monetary Order for the sum of \$478.00 pursuant to s. 67 of the *Act*.

With regards to the tenants request to gain an Order for the landlord to make repairs to the unit; the landlord has not appeared at the hearing to dispute the tenants claim that repairs are required in the unit to the roof, the bedroom ceiling, the balcony, the patio door, excessive condensation on the windows, a baseboard heater and the condition of the paint on the outside of the property. The tenants agree that they have not put these repair requests in writing to the landlord except in their documentation for this hearing. However, the tenants have requested repairs verbally many times over the course of their tenancy and the landlord was aware of the problem with the leaking roof as the landlord sent three different contractors out to inspect the roof and was told it would require replacement.

I refer the landlord to s. 32(1) of the *Act* which states:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I have taken into consideration that the tenants have not yet put the repairs in writing to the landlord but the landlord is still obligated to provide and maintain a rental unit in a state of decoration and repair which from the tenants evidence the landlord has clearly not complied with. Consequently, **I ORDER THE LANDLORD** to investigate the tenants concerns with the above areas of the rental unit and affect any necessary repairs to maintain the unit and ensure the unit complies with the health, safety and housing

standards required by law and make the unit suitable for occupation by the tenants. The landlord must comply with this Order within One Month of receiving this Decision.

With regard to the tenants application to reduce their rent for repairs not completed by the landlord; As the landlord would have been aware that some of these repairs were required from conversations with the tenants and having sent roofing contractors to the property **I ORDER THE TENANTS** to reduce their rent by **\$200.00 per month** until the landlord takes steps to remedy the repairs required in the property or until such a time as the tenancy ends.

As the tenants have been successful with their claim they are also entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause is cancelled and the tenancy will continue.

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$528.00** comprised of money owed and the filing fee. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ORDER the landlord to comply with s. 32 of the *Residential Tenancy Act* and ensure the rental unit complies with the health, safety and housing standards required by law and make the unit suitable for occupation by the tenants. The landlord must comply with this Order within One Month of receiving this Decision.

I HEREBY ORDER the tenants to reduce their rent by **\$200.00** each month until the landlord complies with s. 32 of the *Act*.

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: February 03, 2012.

Residential Tenancy Branch