



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenants' application: CNR; MNDC; FF

Landlord's application: OPR; MNR; FF

Introduction

This matter was reconvened from March 15, 2012. An Interim Decision was provided on March 16, 2012, which should be read in conjunction with this Decision.

These are cross applications. The Tenants have applied to cancel a Notice to End Tenancy for Unpaid Rent issued February 21, 2012 (the "Notice"); for compensation for damage or loss under the Residential Tenancy Act (the "Act"), regulations, or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The Landlord has applied for an Order of Possession; a Monetary Order for unpaid rent; and to recover the cost of the filing fee from the Tenants.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issues to be Decided

- Should the Notice be upheld or canceled?
- Is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to the monetary award pursuant to the provisions of Section 67 of the Act?
- Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The Landlords provided a copy of the Notice in evidence. It was issued on February 21, 2012, for \$2,935.00 in unpaid rent that was due on February 15, 2012, and served by posting on the Tenants' door on February 21, 2012. The Landlord's Application indicates that the Tenants paid \$1,850.00 on February 27, 2012, and that the remainder in the amount of \$1,085.00 remains unpaid.

The Tenants testified that they were unable to locate the receipt for rent paid in September, 2011. The Landlord's agents submitted that the Tenants could not find it because they didn't pay the rent and therefore no receipt was issued.

The Tenants acknowledged that rent for January and February, 2012 was owed when the Notice was issued, but stated that the Landlord had not picked it up, although it was ready. They submitted that September 2011, rent was paid in September and alleged that the Landlord has a history of issuing notices to end the tenancy which are found by dispute resolution officers to be invalid notices. The Tenants allege that the Landlord is "a slum lord who wants to get rid of us so he can do cosmetic changes and charge more rent."

The Tenants testified that rent is paid in cash because the Landlord was failing to cash their cheques on time and then alleging that rent was late or not paid. Therefore, the parties made an agreement that rent would be paid in cash and that the Landlord would pick it up after the Tenants called to give them the time of day when they were home for it to be picked up.

The Tenants testified that after they received the Notice to End Tenancy, they made telephone calls and sent emails to the Landlord's agent asking for particulars with respect to the rent the Landlord believed was owed, but the Landlord's agents either didn't return their calls, or passed them off to other agents who didn't return their calls. The Tenants provided copies of e-mails in evidence. The Tenants reiterated what they said during the Hearing on March 15, stating that they had not seen the "Tenant Ledger" provided in evidence by the Landlord until they received it on March 7, 2012 with the Landlord's documents. The Tenants submitted that the Tenant Ledger was a document that could have easily been "made up".

The Landlord's agent testified that the Tenants were chronically late paying their rent and that this month's rent was not paid until March 19, 2012. The Tenants replied that it was ready on the 15th, but the Landlord had not come to collect it despite e-mails that the Tenant sent advising that it was ready to be picked up.

The Tenants stated that the Landlord has still not complied with repair Orders made two years ago, or to the repair Orders which were issued in December, 2011. They testified that the heaters still don't work, the kitchen ceiling still leaks, and that their bathroom has not been remediated against mould as ordered by the director.

The Landlord's agents testified that the Landlord complied with the Order regarding the mould in the bathroom by applying plastic around the bathroom closet and taping it in

place. During the Hearing, the Landlord's agents gave different reasons for not complying fully with repair Orders:

1. They stated that the Tenants were uncooperative with the Landlord and would not allow the Landlord access to the rental unit in order to fix the problems.
2. They stated that they have attempted to have an environmental company assess and remediate the mould problem in the bathroom, and that they say they will get back to them but don't.
3. They testified that the Tenants were ordered to provide them with a key to the rental unit, but have not.
4. They testified that the Tenants gave them a key, but that it did not open the door to the rental unit.

The Tenants denied that they had refused access or that the key did not work. They submitted that they have no reason not to cooperate because they want the repairs to be done and have had to file numerous applications to get Orders for repairs. They stated that Landlord always has excuses and will not complete the work.

The Landlord's agents stated that there are 96 tenants in the rental property and that they have no problems with any other occupants, only the Tenants.

The Tenants allege that the Landlord continues to harass them and to interfere with their quiet enjoyment of the rental unit by issuing the invalid Notice to End Tenancy and by failing to repair the rental unit. The Tenants testified that the only portion of the Order from December, 2011, that the Landlords have attended to is the removal of rubble from the deck. The Tenants seek a monetary award in the amount of \$500.00 for harassment and loss of peaceful enjoyment.

The Tenants stated that the Landlord took four months to fix their dishwasher. They seek monetary compensation in the amount of \$250.00 per month for loss of the use of their dishwasher, for a total of \$1,000.00. The Tenants stated that a dishwasher was very important to them and that they would not have rented a place that did not have one.

Analysis

This Hearing was challenged by the animosity between the parties. Both parties made reference to previous Hearings with respect to this tenancy. This is the seventh Hearing involving these parties over the past two years, including an Application for Dispute

Resolution where I was the Dispute Resolution Officer, held on September 26 and November 23, 2011. The following is a recap of the prior Hearings:

1. Hearing date: February 24, 2010 (decision issued February 25, 2010)
Applicant: Tenants
Issues: Should a Notice to End Tenancy be set aside?
Should a Notice of Rent Increase be set aside?
Are the Tenants entitled to a Monetary Order?
Should the Landlord be ordered to perform repairs?
Conclusion: Notice to End Tenancy set aside
Notice of Rent Increase set aside
Tenants awarded \$1,540.00 for loss of heat; laundry room leak; kitchen leak; bathroom leak and unrepaired wall; and recovery of filing fee.
Landlord ordered to repair leaks, repair walls and heating system by March 31, 2010
2. Hearing date: March 22, 2010
Applicant: Landlord
Issues: Landlord sought Order of Possession, and Monetary Order for unpaid rent
Conclusion: This matter proceeded by way of Direct Request Proceeding, where the attendance of a tenant is not required, pursuant to the provisions of Section 55(4) of the Act. The Dispute Resolution Officer found that the findings in the February 2010 decision may impact the amount of rent owed for January 2010, and therefore the Direct Request Proceeding could not proceed. The Landlord's application was dismissed. The Dispute Resolution Officer stated that if rent is owed, then the Landlord was at liberty to issue another Notice to End Tenancy and if a Hearing were required, it would be set for a participatory Hearing.
3. Hearing date: June 22, 2010 (decision issued July 20, 2010)
Applicant: Tenants
Issues: Should a Notice to End Tenancy be cancelled?
Should the Landlord be ordered to comply with the Act, regulation or tenancy agreement; make repairs; or provide services and facilities?
Should an order be made setting conditions on the Landlord's right to enter the rental unit?

Conclusion: Are the Tenants entitled to a reduction in rent?
Notice to End Tenancy cancelled.
The Landlords were ordered to cease any and all attempts to collect rent allegedly owing prior to June, 2010, including issuing 10 Day Notices.
The Dispute Resolution Officer found that the Landlord had not complied with the Orders made February 25, 2010.
The Tenants were provided with a reduction in rent in the total amount of \$300.00 per month until the repairs have been made, backdated to March, 2010.
Order made for further \$25.00 deduction in rent commencing August 1, 2010, until mail delivery is restored to the rental unit.
Order made with respect to the Landlord replacing patio boards.
Landlord ordered to comply with Sections 28 and 29 of the Act.
Tenants awarded \$500.00 for harassment by the Landlord.

4. Review Application: August 12, 2010

Applicant: Landlord

Issues: Landlord applied for a review, alleging that the Decision and Orders arising from the Hearing on June 22, 2010, were obtained by fraud.

Conclusion: Reviewing Officer found that there was insufficient evidence that the Orders were obtained by fraud and that insufficient evidence that, even if the Landlord's submissions were accepted, the Decision or Order should be set aside or varied. Application dismissed.

5. Hearing date: August 30, 2010 (decision issued August 30, 2010)

Applicant: Tenants

Issues: Should two Notices to End Tenancy be cancelled?
Should an order be made allowing the Tenants to change the locks at the rental unit?
Are the Tenants entitled to a Monetary Order and rent reductions related to repairs, services or facilities?

Conclusion: The Dispute Resolution Officer found that the Landlord had "withdrawn" the Notices to End Tenancy prior to the Hearing and therefore that portion of the Tenants' application was "dismissed as resolved".
The Tenants' application to change the locks was dismissed.

The Tenants' application for a Monetary Order and rent reductions was dismissed, as the Dispute Resolution Officer found that there were no new repair orders required, that the Tenants were already being compensated, and therefore the matter was res judicata.

The Dispute Resolution Officer noted that the Landlord had engaged a new agent, and encouraged both parties to resolve their issues in a cooperative manner.

6. Hearing dates: September 26 and November 23, 2011 (interim decision September 28, 2011 and final decision December 14, 2011)

Applicant: Tenants

Issues: Are the Tenants entitled to monetary awards and Orders sought pursuant to the provisions of Sections 32, 62(3), 65(1), 67 and 72(1) of the Act?

Conclusion: Comprehensive Order made with respect to mould and possible asbestos remediation. Order made that an experienced and reputable contractor familiar with fungal remediation and asbestos abatement work procedures conduct the remediation work. Order made that following completion, a professional mould inspector must conduct a visual inspection and fungal clearance sampling and a copy of the report must be provided to the Tenants upon completion of the report.

Order that the Landlord remove construction rubble and secure patio boards.

Rent reductions in the total amount of \$275.00 per month until repairs are completed.

Order that the Landlord comply with Sections 28, 29 and 32 of the Act.

Rent abatement for Landlord's failure to provide heating inspection report and repairs; repair kitchen ceiling; and repair bathroom wall (not completed from July 20, 2010 Order).

Permanent rent reduction for removal of laundry room from rental unit.

Monetary compensation in the amount of \$1,115.00 for loss of quiet enjoyment, loss of laundry facilities for 3 months, loss of working refrigerator and recovery of filing fee.

The Landlord seeks to end the tenancy for unpaid rent in the amount of \$1,085.00 allegedly owed since September, 2011. I prefer the Tenants' testimony with respect to whether or not rent was paid in September, for the following reasons:

1. I found the Landlord's agents testimony in general to be inconsistent, vague. The Landlord's agents provided four different and contradictory reasons for not complying with my Orders of December 14, 2011 with respect to the mould investigation and remediation. At first, they stated that the Tenants would not allow the Landlord access to complete repairs. When I reminded them what I had advised them at the last Hearing about their right to enter after giving 24 hours written notice, they changed their reason for not complying. They testified that they had attempted to have an expert assess and remediate, but that the expert would not return their calls. Later on their testimony, they stated that the Tenants had not provided them with a key to the rental unit after being ordered to do so. When the Tenants challenged that statement, they submitted that the Tenants did provide them a key but it did not open the door.
2. I found the Tenants' testimony in general to be consistent and believable. They did not dispute that they owed rent for the months of January and February, 2012, and in fact paid that rent when the Landlord came to pick it up as arranged.
3. Based on the history of the Landlord failing to comply with director's orders, and based on the history of the Landlord issuing Notices to End Tenancy in the past that were found to be not valid, I find the Tenants' allegation that the Landlord is attempting to get rid of them by issuing invalid notices to end the tenancy, is probable.
4. In my Decision of December 14, 2011, I made the following finding:
"Therefore, I find that the Tenants have overpaid rent for the months of July, 2011 to and including December, 2011, and are entitled to a compensation for that overpayment in the amount of \$450.00 (\$75.00 x 6 months)."

This period of time included the month of September, 2011. If the Tenant did not pay rent for the month of September, 2011, then why did the Landlord not mention unpaid rent during the Hearings of September 26 and November 23, or make application for correction of the December 14 Order?

For the above reasons, I find that the Tenants were more credible with respect to whether or not they had paid rent for September and I **dismiss the Landlord's claim in its entirety.**

With respect to payment of future rent, **I hereby Order** that the Tenant provide the Landlord with a series of post dated cheques commencing April 15, 2012. These post dated cheques must be mailed (**by registered mail**) to the Landlord at the address the Landlord gave for service during the Hearing. The Tenant testified during the Hearing that the Landlord has attended to the removal of rubble and therefore, I find that rent is currently **\$925.00** after deducting the rent reductions as set out in my Decision dated December 14, 2011. The Tenants are cautioned that rent is due on the 15th of each month and that it is their responsibility to ensure that it is paid on time.

For clarity, effective July 1, 2010, monthly rent for the rental unit was **\$1,425.00**. The Landlord completed the repair order regarding the patio boards and rubble and therefore the rent abatement of **\$25.00** per month for that repair is extinguished. The Tenants are entitled to a rent reduction of **\$500.00** per month until the remaining repairs are completed to the satisfaction of the Tenant:

Remaining rent abatement from July 20, 2010 Order:	
Failure to provide heating inspection report and repairs	\$150.00
Failure to repair kitchen ceiling	\$50.00
Failure to repair bathroom wall	\$50.00
Rent abatement effective January 1, 2012:	
Until Landlords comply with orders of December 14, 2011	<u>\$250.00</u>
TOTAL	\$500.00

The Landlord is hereby warned of the provisions of Division 2.1 of the Act with respect to Administrative Penalties for failure to comply with Orders or for contravention of the Act.

With respect to the Tenants' claim for compensation for loss of a dishwasher, the Landlords' agents testified that they took 4 months to repair the dishwasher with no reasonable explanation for the delay. I find that the Tenants' claim in the amount of \$250.00 per month for loss of use of the dishwasher is excessive and allow this portion of the Tenants' claim in the amount of \$50.00 per month, totalling **\$200.00**.

The Landlord has done little to comply with the repair Orders made July 20, 2010 and December 14, 2011, and I find that as a result of that failure to comply with Section 32 of the Act, the Tenants have suffered continuing loss of peaceful enjoyment of the rental unit. I find that the Tenants are entitled to their claim in the amount of **\$500.00** for this loss.

The Tenants have been successful in their application and I find that they are entitled to recover the cost of the filing fee from the Landlord in the amount of **\$50.00**.

I Order that the Tenants may deduct their monetary award in the total amount of **\$750.00** from future rent due to the Landlord, pursuant to the provisions of Section 72 of the Act. For clarity, rent due April 15, 2011, will be **\$175.00**.

Conclusion

The Landlord's application is **dismissed in its entirety**. The tenancy will continue until it is ended in accordance with the provisions of the Act.

The Landlord is **hereby warned of the provisions of Division 2.1 of the Act** with respect to Administrative Penalties for failure to comply with Orders or for contravention of the Act.

I hereby Order that the Tenant provide the Landlord with a series of post dated cheques commencing April 15, 2012. These post dated cheques must be mailed (**by registered mail**) to the Landlord at the address the Landlord gave for service during the Hearing. The Tenant testified during the Hearing that the Landlord has attended to the removal of rubble and therefore, I find that rent is currently **\$925.00** after deducting the rent reductions as set out in my Decision dated December 14, 2011. The Tenants are cautioned that rent is due on the 15th of each month and that it is their responsibility to ensure that it is paid on time.

The Tenants have been successful in their application and are awarded **\$200.00** for loss of use of their dishwasher for four months and **\$500.00** for loss of quiet enjoyment of the rental unit from December, 2011 to and including March, 2012. The Tenants are entitled to recover the cost of the **\$50.00** filing fee from the Landlord. I Order that the Tenants may deduct their monetary award in the total amount of **\$750.00** from future rent due to the Landlord, pursuant to the provisions of Section 72 of the Act. For clarity, rent due April 15, 2011, will be **\$175.00** after deducting the Tenants' monetary award.

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 30, 2012.

Residential Tenancy Branch