



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      RR, O, FF

### Introduction

This hearing dealt with an application by the tenant to reduce rent for repairs, services or facilities agreed to but not provided, other or loss and recovery of the filing fee.

Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Are the tenants entitled to any of the above under the Act.

### Background and Evidence

This tenancy began May 1, 2011 with monthly rent of \$800.00

Matters related to this tenancy were heard March 27, 2012 under file 788255. In this hearing the landlord was ordered to:

- *Complete all electrical repairs noted in the Safety BC list no later than April 15, 2012. Failure to complete the required repairs by the specified date will result in a \$100.00 per month rent reduction until such time as these repairs have been completed and the Landlord has provided the Tenant with written notice that the repairs have been completed.*
- *Complete all repairs to the bathroom no later than April 30, 2012. Failure to complete the required repairs by the specified date will result in a \$50.00 per month rent reduction until such time as these repairs have been completed and the Landlord has provided the Tenant with written notice that the repairs have been completed.*
- *Have the dryer inspected and repaired if necessary no later than April 15, 2012. Failure to complete the required repairs by the specified date will result in a \$50.00 per month rent reduction until such time as these repairs have been completed and the Landlord has provided the Tenant with written notice that the repairs have been completed.*

The landlord testified that all of the required repairs were completed and the tenants notified in writing by the deadlines as outlined above however the tenants still deducted \$200.00 from the May 2012 rent. The landlord stated that the tenants had also been given proper notice of a rent increase but the tenants did not pay the additional \$34.00. The landlord stated that as the tenants withheld rent, on May 4, 2012 he issued the tenants a 10 day notice to end tenancy for unpaid rent. The landlord stated that the electrical and dryer repairs were completed by April 12, 2012 and the new bathroom completed by April 24, 2012 and the tenants advised in writing of the repairs when they were completed.

The tenants testified that they paid \$650.00 rent to the landlord and that they deducted \$150.00 and not \$200.00 from the rent as the landlord had not both completed and notified them in writing about the electrical and dryer repairs as ordered in the previous decision. The tenants stated that the landlord provided the notifications for these completed repairs when he served them the notice to end tenancy on May 4, 2012 and not on April 12, 2012 as the landlord claims.

The tenants stated that when the repairs were being completed the landlord often did not give the tenants proper notice to enter the rental unit. The tenants stated that they were also without a shower for 2 ½ weeks due to the extensive repairs required in the bathroom.

The tenants stated that they have since been given a 2 month notice to end tenancy for landlord's use of property with an end of tenancy date of July 31, 2012 as the landlord has been directed by the municipality to bring the illegal suite up to code. The tenants stated that the renovations needed in the rental unit will require vacant possession as windows must be installed in the bedrooms, the cedar on the walls removed and the suite brought up to code for fire ratings.

The landlord acknowledged that these repairs must be made to the rental unit and that he has received a letter from the municipality to bring the illegal suite up to code.

The tenants stated numerous articles of clothing and bedding have been damaged by the dryer that would over heat and leave burn marks on items. The tenants stated that the landlord did bring in a technician who checked the dryer when the tenant was drying a load of clothes, determined the dryer to be in good working order and then exchanged this dryer with one that was on the landlord's deck. The tenants stated that they have not had any problems with the replacement dryer leaving burn marks on items.

The landlord maintains that the burn marks on the tenant's clothing is from the dryer being overloaded by the tenant during use and not because the dryer was defective. The landlord's witness stated that he has been doing dryer repair work for 10 years and he knows when a dryer is in good working condition or not. The landlord's witness maintained that the original dryer in the rental unit was working fine and continues to work fine however he did not comment as to why the original dryer was removed and replaced with another.

The tenants stated that since the last hearing the landlord has blocked off part of the yard they used to have access to, there is still construction debris all along their walkway and the landlord has stopped cutting the grass in the area where they had yard access.

The landlord maintained that the tenant's statements were not true and that the photo submitted by the tenants makes it look like the landlord put up a big lattice screen when in fact it's a small piece of lattice.

### Analysis

Based on the documentary evidence and testimony of the parties I find that there is insufficient evidence to uphold the Notice to End Tenancy for Unpaid Rent.

The onus or burden of proof is on the party making the claim and in this case the landlord has claimed there is cause to end this tenancy and the tenant does not agree. The landlord must prove he has cause to end this tenancy and when one party provides testimony/evidence of the events in one way and the other party provides an equally probable but different testimony/evidence of the events, then the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find that the landlord has failed in his burden of proving he has cause to end this tenancy as the landlord claims that the tenants were notified of the completed repairs on April 12, 2012 and the tenants maintain they were notified of the completed repairs on May 4, 2012. Therefore the landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated May 4, 2012 is hereby set aside with the result that the tenancy continues uninterrupted.

The parties do however acknowledge that the 2 Month Notice to End Tenancy for Landlord's Use of Property is valid and that extensive repairs are required in the rental unit per the local municipality. The tenants and landlord both clearly understand that based on this notice the tenancy will effectively end July 31, 2012 at 1:00PM.

As the parties dispute when the tenants were notified of the completed repairs that this office ordered, I will allow the tenants the \$150.00 deduction on the May 2012 rent as outlined in the previous decision. The tenants acknowledge that they are still holding the \$650.00 May rent and they will pay this amount along with the \$34.00 for the rent increase by week's end to the landlord. The parties both understand that the tenants are entitled to 1 month's rent as compensation for the 2 month notice and no rent will be due for July 2012.

In regards to the tenants request for compensation I find that the tenant's are entitled to the limited amount of \$500.00.

While the landlord's witness maintained that nothing was wrong with the original dryer, consideration must be given to the fact that clothing and bedding was left with burn marks when that dryer was being used and that this no longer happens with use of the replacement dryer. A reasonable person therefore would consider that there was an issue of some sort with the original dryer that caused the burn marks to happen. However as the tenant's have not provided a detail list of damaged items with the age and replacement cost of these items, I find that the tenants are entitled to \$400.00 compensation.

In regards to the tenants not having a shower for 2 ½ weeks I find that the tenants are entitled to \$100.00 compensation.

It is recognized that the landlord, once the repairs were started in the rental unit, perhaps considered the initial notice given to the tenant's as proper notice for the entire duration of the repairs and the parties with some communication, could have reached an agreement regarding entry in the rental unit to complete the work as ordered by this office. The tenant's request for compensation in relation to this matter is dismissed without leave to reapply.

The tenant's photos that have been submitted into evidence shows construction debris in the yard, the yard unkempt and a small piece of lattice potentially blocking part of the yard the tenants previously had access to. As the landlord has a duty to maintain the rental property the landlord is to have all construction debris removed, the lattice removed and the yard maintained by June 9, 2012. The tenant's request for compensation in relation to this matter is dismissed without leave to reapply.

Accordingly I find that the tenants are entitled to a monetary order for \$500.00.

As the tenant has been successful in their application the tenant is entitled to recovery of the \$50.00 filing fee.

### Conclusion

The landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated May 4, 2012 is set aside with the result that the tenancy continues uninterrupted.

I find that the tenants have established a monetary claim for \$500.00 in compensation due to damage or loss. The tenants are also entitled to recovery of the \$50.00 filing fee.

**The tenants may deduct \$550.00 from future rent owed to the landlord.**

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: May 29, 2012

---

Residential Tenancy Branch