



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, FF

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request to cancel a Notice to End Tenancy for non-payment of rent, a request for a monetary order for \$400.00, and request for recovery of the \$50.00 filing fee.

Background and Evidence

The applicants testified that:

- In a previous hearing the Dispute Resolution Officer ordered that the landlords do repairs in the rental unit to resolve their concerns of noise in the bedroom wall.

- The Dispute Resolution Officer also ordered a rent reduction as follows if the corrective action had not been completed by the date in the month when the rent became due:

Item	Amount
Reduction in monthly rent for March 2012	\$200.00
Reduction in monthly rent for April 2012	\$300.00
Reduction in monthly rent for May 2012	\$400.00

- The landlord sent a plumber who cut an approximately 10" x 10" hole in the wall and attempted to rectify the noise issue.
- The whole was then covered over with drywall however it has never been sealed and painted.
- The attempt by the plumber did not completely rectify the problem although it did make the noise significantly less; however they still hear noise on occasion.
- On February 10 they verbally told the landlord that the disturbance still existed and were told that the plumber would come back; however the plumber has never returned.
- On February 23 they phoned the resident manager and again informed him that the plumber was supposed to come back and had not. To date the plumber has still not returned.
- Therefore when rent became due for March 2012 they deducted the extra \$200.00 allowed from the previous dispute resolution.
- Then again when rent became due for April 2012 they deducted the \$300.00 allowed in the dispute resolution officer's decision and paid the balance.
- On March 31, 2012 they received a late rent notice plus a \$25 late payment charge. They went down to the landlord's office and explained that they had requested that the job be completed and it never was and therefore they were entitled to deduct the money off their rent.

- April 23, 2012 they received an eviction notice from the landlord for non-payment of rent, and therefore they went to the Residential Tenancy Branch and filed a dispute of the notice.
- On April 25, 2012 they provided the landlords with the notice of hearing papers and with their one months notice to end the tenancy.
- On April 30, 2012 they paid the full May 2012 rent.

The applicants are therefore requesting an order cancelling the Notice to End Tenancy, and are requesting a monetary order for \$400.00 as they believe they had the right to deduct that from the May 2012 rent since the landlords have still failed to rectify the noise issue and complete the repair.

The landlords testified that:

- On February 9, 2012 they had a plumber open the wall of the suite to attempt to discover what was causing the noise that the tenants were hearing.
- The plumber discovered that heating pipe had been rubbing on the inside of the wall causing the noise, this was therefore repaired and the opening was filled back in although it was never sealed or painted in case further access was needed.
- They did speak with the tenant in the hallway one day at which time it was stated that he could not hear any noise but the female tenant thought that she might still be hearing the noise. They were going to monitor it and let them know.
- They never heard anything further from the tenants and therefore on February 22, 2012 they issued a letter to the tenants stating that the repairs had been made and that we heard nothing further and that we therefore considered the matter resolved and that other than the initial award nothing further should be deducted from the rent.
- On February 28, 2012 the applicants paid their rent and deducted a further \$200.00 from their March 2012 rent.
- On March 31, 2012 the applicant's deducted a further \$300.00 from their April 2012 rent and therefore at this point we issued a late rent notice.

- The applicants attended our office to dispute the late notice and we advise them that since we have not heard from them since we issued a letter on February 22 we reconsider the matter resolved.
- The tenants claim there still is a noise existing, however they refuse to allow us access to hear the noise.
- Therefore on April 23, 2012 we decided to issue a 10 day Notice to End Tenancy for non-payment of rent as we do not believe that the total \$500.00 in deductions is justified.

We therefore ask that the Notice to End Tenancy be upheld and that the request for a further \$400.00 monetary order be denied.

Analysis

It is my finding that the landlords have taken reasonable steps to comply with the Dispute Resolution Officer's order from the previous dispute resolution hearing.

The landlords had a plumber come in and investigate, open the wall, identify problem, and rectify the problem, and I fail to see what further actions they could have taken.

The tenants themselves have testified that the plumber's actions greatly reduce the noise coming from the wall and although they claim there is still some vibration noise coming from the wall I find it hard to see how the landlords could have done anything further since the tenants are refusing them access to hear the noise when it's occurring.

The tenant also argued that since the wall has not been properly sealed and painted that the job is not complete, however it is my finding that it was reasonable for the landlords to leave an access opening in case further work was required.

Therefore since it is my finding that the landlords have substantially complied with the repair order required by the previous Dispute Resolution Officer, the tenants did not

have the right to deduct a further \$200.00 from the March 2012 rent, or a further \$300.00 from the April 2012 rent.

I therefore am not willing to set aside the Notice to End Tenancy that was issued by the landlords; however that is somewhat of a moot point as the landlords have now accepted the full rent for the month of May 2012 and therefore have reinstated the tenancy.

I also deny the tenants request for a \$400.00 monetary order and for recovery of the filing fee

Conclusion

This application is dismissed in full without leave to reapply.

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 14, 2012.

Residential Tenancy Branch