

## **DECISION**

Dispute Codes      MNDC, MNR, OPB, OPC, OPR, CNR, MNR, MNDC, LRE, RR, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on May 28, 2012 with an amended application on June 12, 2012 for:

1. An Order cancelling a Notice to End Tenancy – Section 46;
2. A Monetary Order for cost of emergency repairs – Section 67;
3. A Monetary Order for compensation or loss - Section 67;
4. An Order suspending or setting conditions on the landlord’s right to enter the unit – Section 70;
5. An Order allowing the tenant to reduce rent for services agreed upon but not provided – Section 65;
6. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on June 5, 2012 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for compensation – Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter

At the onset of the Hearing, the Parties agreed that the Tenants moved out of the unit on June 12, 2012. As a result, the Tenants state that they are no longer seeking orders in relation to a reduction in rent for services not provided and in relation to access to the unit by the Landlord. The Tenant states further that no emergency repairs were made by the Tenant during the tenancy. As a result the Tenants withdraw their claims in relation to these matters. The Landlord confirms that he has possession of the unit.

Accordingly, the Landlord's claim for an Order of possession is dismissed. The Landlord withdraws the claim for unpaid pet and security deposit.

#### Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Are the Parties entitled to recovery of their respective filing fees?

#### Background and Evidence

The tenancy agreement was signed on November 1, 2011 for a fixed term to June 30, 2012. The Tenants state that they moved into the unit earlier but that no rent was payable for October 2011. The Landlord states that there was a verbal agreement for the Tenants to pay October 2011 rent sometime in the future. The Landlord claims \$650.00 unpaid rent for October 2011. The Parties agree that June 2012 rent was not paid and the Landlord claims \$650.00 for unpaid June rent.

The Landlord states that rent of \$650.00 is payable monthly. The Tenant states that rent payable is \$600.00 monthly. The Tenant states that rent was reduced to \$600.00 in exchange for not having internet services. The Landlord states that internet was provided but only to a certain level of usage and that the Tenants were required to pay the overage. Each Party filed a copy of the tenancy agreement. The Landlord filed a copy noting rent of \$650.00. The Tenant filed a copy noting rent of \$600.00. Both copies appear to have had the rental amount changed. Both copies also note that internet is included in the rent. The Parties agree that \$600.00 was paid monthly to the Landlord since the onset of the tenancy. No security deposit was collected by the Landlord. The Landlord claims \$350.00 in unpaid rent for the months November 2011 to June 2012 and \$257.00 for internet over usage charges for October, November and December 2012.

The Tenant states that on May 21, 2012 the Landlord hooked up his camper and used the Tenants hydro for 4 days. The Landlord states that the Tenants gave him

permission to hook up his camper and use the hydro but that the next day the one Tenant told him to remove his hook-up and this was done. The Tenants claim \$50.00 for the hydro usage. The Tenant did not provide a bill for this amount and states that the amount claimed is a pro-rated portion of the two month hydro bill of approximately \$700.00.

The Tenant states that during the tenancy the Landlord has been given permission to stay in the yard of the unit on occasion. The Tenants state that the Landlord had been disruptive to the Tenants by making noise in the yard, showing up without any notice and entering the unit to shower while they were out. The Tenants state that on May 25, 2012, the Landlord was told that he was no longer able to stay in the yard with his camper. Around this time, the Tenants state that the Landlord threatened the one Tenant by saying he knew a lot of bad people who could hurt the Tenants and their family if anything happened to his house or land. The Tenant states that the Landlord stated he was going to "kick my ass" and then challenged the Tenant to a fight saying "are you ready to die?" which the Tenant states was declined. The Tenant states that the incident was reported to the police. The Landlord denies threatening the Tenants but admits that the police did show up to speak with him about the incident. The Landlord states that during the incident the Tenant threatened to kill him. The Tenant denies this. The Landlord states that no charges have been laid in relation to the incident.

The Tenant states that on June 10, 2011 the Tenants power was disconnected and the electrical panel was padlocked by the Landlord. The Tenant states that the power was off for June 10, 11 and 12 and that there was also no water for 5 days. The Tenant states that as they have small children, they were unable to live at the unit without power or water and on June 12, 2012, the Tenants moved out of the unit. The Landlord states that the power was disconnected as the Tenants would not answer their door and urgent maintenance was required to the water pump and septic field. The Landlord states that on June 12, 2012 the pipe failed. The Tenant states that the pipe was

punctured by the Landlord's gear that he stored in the pump house and that this caused the pipe top fail. The Tenant agrees that the pipe failure would cause an emergency.

The Tenants state that as a result of the loss of water and power, they had no choice but to leave the unit. The Tenants state that they are staying at a relative's home but have had to eat out. The Tenants state that as a result of the utilities being cut off, they lost food in the fridge and claim a total of \$158.00 for the replacement value of the food. The Tenants also claim \$1,200.00 for a "very unpleasant stay" at the unit during May and June 2012 and \$1,385.00 for stress and inconvenience associated with the Landlord's actions throughout May and June 2012.

### Analysis

Section 7 of the Act provides as follows:

- (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 27 of the Act provides as follows:

- (1) A landlord must not terminate or restrict a service or facility if
  - (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
  - (b) providing the service or facility is a material term of the tenancy agreement.

Section 28 of the Act provides as follows:

- A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
- (a) reasonable privacy;
  - (b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party and that costs for the damage or loss have been incurred or established.

Given that the tenancy agreement was signed on November 1, 2012 to start on that date and does not include any rent payable for October 2011, given that the only undisputed evidence in relation to rent payable is that the Tenants paid \$600.00 per month since November 2011, I find that the Landlord has not substantiated that rent was higher than paid or that rent was payable for October 2011 and I dismiss these claims. Given the tenancy agreement that indicates that internet is provided with no reference to usage limits, I dismiss the Landlord's claim for over usage of the internet. Given the undisputed evidence of the Parties that June 2012 rent was unpaid, I find that the Landlord has substantiated a monetary amount of **\$600.00** for this unpaid rent.

Given the lack of a bill to establish costs for the Landlord's use of hydro for four days, I find that the Tenants have failed to substantiate the costs of that usage and I therefore dismiss this claim of the Tenants'. Given the undisputed evidence that the Tenants' hydro and water was disconnected and as these utilities are essential to the Tenants' use of the unit, I find that the Tenants had no choice but to seek alternate accommodation. In addition, as I find the Tenants' evidence in relation to the behavior and acts of the Landlord during May and June 2012 to be persuasive, I find that the Tenants' have substantiated a further loss of quiet enjoyment of the unit. Given these facts, I find that the Tenants are entitled to reasonable compensation of **\$1,000.00**.

Although the Tenants did not provide bills or receipts for the cost of food replacement, accepting that it would be reasonable to expect a loss of refrigerated food with the disconnection of power, I find that the Tenants have substantiated an entitlement to reasonable compensation of **\$158.00** for the loss of food. Given that both Parties

application has only been partially successful, I decline to award recovery of the respective filing fees. The Landlord has a total monetary entitlement of **\$600.00** and the Tenants have a total monetary entitlement to **\$1,158.00**. Setting the entitlements against each other leaves **\$558.00** owing by the Landlord to the Tenant.

### Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$558.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: July 3, 2012.

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Residential Tenancy Branch