



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the landlords - OPR, MNR, MNSD, MNDC, FF

For the tenants - DRI, CNL, (CNR), MNDC, OLC, RP, LRE, RR, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlords have applied for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlords to keep all or part of the tenants' security deposit; and to recover the filing fee from the tenants for the cost of this application. The landlords have withdrawn their application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

The tenants have applied to dispute an additional rent increase; to cancel a Notice to End Tenancy for landlords use of the property (amended to cancel a Notice to End Tenancy for unpaid rent); for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; for an Order for the landlords to make repairs to the unit, site or property; to suspend or set conditions on the landlords right to enter the rental unit; to allow the tenants to reduce rent for repairs services or facilities agreed upon but not provided; and to recover the filing fee from the landlords for the cost of this application. The tenants withdraw their application for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement.

The tenants and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the parties were permitted to provide additional

evidence after the hearing had concluded. All evidence and testimony of the parties has been reviewed and are considered in this decision.

#### Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession for unpaid rent?
- Are the landlords entitled to a Monetary Order to recover unpaid rent?
- Are the landlords entitled to keep the security deposit?
- Are the tenants entitled to cancel the Notice to End Tenancy?
- Have the landlords given the tenants an additional rent increase? If so are the tenants entitled to dispute it?
- Are the tenants entitled to an Order for the landlords to comply with the Act?
- Are the tenants entitled to an Order for the landlords to make repairs to the unit, site or property?
- Are the tenants entitled to an Order to suspend or set conditions on the landlords' right to enter the rental unit?
- Are the tenants entitled to reduce their rent for repairs, services or facilities agreed upon but not provided?

#### Background and Evidence

Both parties agree that this month to month tenancy started on March 01, 2012. Rent for this unit is \$3,000.00 per month and is due on an undetermined date each month. The tenants paid a security deposit of \$500.00 on February 20, 2012.

The parties have provided a copy of the tenancy agreement which states in the addendum that the landlords will supply all agreed upon supplies. Tenants will do agreed upon renovations at a wage of \$30.00 per hour. Hours will be negotiated between the parties. Wages will come off the rent owing up to a maximum of \$900.00 per month or 30 hours. The addendum also lists the renovations required to the property.

The landlords testify that the tenants did complete some of the renovations in the bathroom in March and April, 2012 and their rent was adjusted in accordance to the agreement to \$2,100.00 for each month. The tenants only paid \$2,100.00 in May and June, 2012 and owe \$900.00 for each of these months as the tenants have not done any renovation work to the unit in May and June, 2012. The landlords' testify that the tenants have provided no documentation showing the actual hours worked. The landlords' testify that the tenants had told the landlords in May and June that they had done work in the unit but the landlords later found out that no work had been completed.

The landlords testify that the tenants failed to pay all the rent owed in July, they paid \$300.00 on July 06, \$1,100.00 on July 20, 2012. This left an outstanding balance for July of \$1,600.00. The landlords served the tenants with a 10 Day Notice to End Tenancy on July 08, 2012 and the landlords applied for a Direct Request Proceeding which was conducted on July 23, 2012. At that proceeding it was determined that the landlord had not specified a day in the month that rent was due and therefore the tenants had until the end of the month to pay the rent. The landlords' application was dismissed with leave to reapply.

The landlords' testify that the tenants did not pay all the rent for July and the landlords filed another application for dispute Resolution. The landlords' testify that the tenants paid \$872.80 on August 17, 2012. The landlords state the tenants informed them that this was towards rent for August. The tenants now owe an outstanding balance of rent for August of \$2,127.20. The landlords agree that they accepted the rent and did not inform the tenants that this was accepted for use and occupancy only and did not reinstate the tenancy.

The landlords seek to recover the outstanding rent of \$5,527.20 less the tenants' security deposit which the landlords have applied to keep. The landlords also seek an Order of Possession for the rental unit.

The tenants dispute the landlords claim. The tenants testify that in March and April they had completed an additional 60 hours work on the renovations so they carried these hours over for the May and June rent and that is why they only paid \$2,100.00 in rent for May and June. The tenants testify that as the tenancy agreement limits the tenants to claiming 30

hours of work or \$900.00 each month they state they had to carry the extra hours to the following two months. The tenants testify that the landlords came to inspect the work on the bathroom and told the tenants to carry these extra hours over.

The tenants' testify that they only paid a portion of the rent for July as the landlord was supposed to get the tenants some supplies so the tenants could carry on doing the renovations. The tenant GM testifies that the landlord RS asked the tenant to give her a list of supplies needed to do the work on the deck and told the tenant that these supplies would be delivered to the house. The tenant states as he then assumed the landlord would provide the supplies he would be able to complete the work on the deck and hence he deducted the agreed upon sum of \$900.00 from the rent in anticipation of the hours it would take to do this work. The tenant states as the supplies did not turn up that is why the tenants only paid \$1,600.00. The tenant testifies that they offered the landlord RS the additional \$700.00 on August 03, 2012 but the landlord refused to take this payment and said she wanted \$1,600.00 plus the rent for August. After that the tenant states the landlord RS sent the tenants a text message and said she no longer wanted to talk to the tenants. The tenants agree they do owe \$700.00 for July's rent and agree they have not paid all the rent for August.

The tenants seek to cancel the 10 Day Notice as there is no agreement as to which day in the month that rent must be paid therefore the 10 Day Notice was issued prematurely and is invalid.

The tenant seek to dispute an additional rent increase as the parties had agreed the tenants could deduct up to \$900.00 per month to carry out the renovations as the landlords have not provided the tenants with any supplies this effectively means the rent has gone up to \$3,000.00.

The tenants seek an Order for the landlord to comply with the tenancy agreement and provide the supplies as agreed for the tenants to continue to do the renovations to the rental unit.

The tenants seek an Order for the landlord to make repairs to the rental unit or provide the supplies to the tenants so the tenants can make the necessary repairs stated as required on the addendum to the tenancy agreement. The tenants' testify that the deck is falling down and is structurally unsound and unsafe. The list of repairs on the agreement states that the deck requires replacement plywood and railings but now the deck is coming away from the house as it was never attached to the house properly.

The tenants' testify that on occasions the landlords have come to the rental unit at 8.00 p.m. which is an unreasonable time considering the tenants have a young child. The tenants recall a time when they had to call the police to have the female landlord RS removed from the unit. The tenants' testify that they respect the landlords' right to inspect the unit once a month but the tenants want written notice at a day and time when the tenants children are at school as they are now afraid of the female landlord and they expect the landlords to turn up after they have given the tenants notice.

The tenants' testify that the landlords have turned off their internet service at the beginning of August, 2012. The tenants' testify that Internet is included in their rent up to the value of \$50.00. The tenant states they had to text the landlord to inform her as they were told to not have any contact with the landlord RS. The tenants testifies that they are also supposed to have a dishwasher in the unit however the one there has never worked and despite the tenants informing the landlords of this, the dishwasher has still not been repaired or replaced. The tenants' testify that they are also supposed to get storage with the rental unit however the storage area is full of the landlords' personal belongings since the tenants moved into the unit. The tenants therefore request that their rent is reduced for repairs, services and facilities agreed upon but not provided.

The landlords dispute the tenants claim. The landlords testify that there is no date on the agreement when work has to be completed. The landlord CC states they cannot afford to pay for the supplies at this time because the tenants have not paid all the rent due even though the tenants have not been doing any work in the unit. The landlord RS denies telling the tenant that supplies would be delivered and the only list of supplies was given to the

landlords in the tenants' evidence package. The landlord RS testifies that she told the tenants that the supplies would be provided when the landlords could afford them.

The landlord disputes that they have turned off the internet service to the unit and is not sure why the internet is not working. The landlord disputes that the tenants have ever informed the landlords that the dishwasher is not working and there was no problem with it at the start of the tenancy.

The landlords testify that the tenants' storage area is the garage and the tenants have access to this area. The landlord disputes the tenants' request to have their right of access to the unit suspended or conditions set upon it. The landlords' testify that they have a right to enter the unit after proper notice has been given to do inspections of the unit.

The tenant cross examines the landlord and asks the landlord if RS's father was present when the RS asked the tenants to buy supplies out of their rent money and did RS's father record that conversation. The landlord replies that she cannot confirm this. The tenants ask the landlord RS if she had stated in front of her parents that the supplies would be delivered. RS replies that she did not say this, RS states it was the tenant screaming at RS to deliver the supplies.

The landlords request a date to be set for the rent to be paid each month. The tenants do not agree with any changes being made to the tenancy agreement.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords' application for an Order of Possession due to unpaid rent; the parties were both given the opportunity to fax in a copy of the 10 Day Notice to End Tenancy which had not been provided in either parties' evidence package prior to the hearing. The 10 Day Notices faxed in by the parties are different and the

landlords Notice has discrepancies such as the tenants names in a different order, the dispute address missing, the effective date is missing. While relevant information such as the parties names are the same I find the landlords' copy of the 10 Day Notice faxed into this office has been altered and as such the landlord has rendered the Notice invalid. I further find that the landlords accepted rent payments from the tenants after the effective date of the Notice and did not inform the tenants that this money was accepted for use and occupancy only. Consequently, it is my decision that the landlords have reinstated the tenancy and the 10 Day Notice is therefore cancelled.

With regard to the landlords claim to recover unpaid rent; I am satisfied with the landlords undisputed evidence concerning unpaid rent for July and August, 2012 to the sum of **\$3,727.20**. Furthermore I have considered the arguments concerning unpaid rent for May and June and find the agreement between the parties does not state that the tenants can work additional hours during any given month and then carry those hours over into the following months. The agreement specifically states the tenants may deduct up to the sum of \$900.00 or 30 hours worked. Consequently it is my decision that the landlords are entitled to recover unpaid rent for May and June to the sum of **\$1,800.00** and I have allowed the landlord to amend their application to recover this sum. The total amount of unpaid rent is **\$5,527.20**.

The landlords have applied to keep the tenants security deposit to offset against the unpaid rent. As the tenancy will continue at this time the security deposit must be held in trust until the end of the tenancy. Consequently, this section of the landlords claim is dismissed with leave to reapply.

With regard to the tenants claim to dispute an additional rent increase. As the landlords have not increased the rent but have only enforced the terms of the tenancy agreement in which it states rent is \$3,000.00 per month I find this section of the tenants application has no merit and is dismissed without leave to reapply.

With regard to the tenants claim for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; I have reviewed the tenancy agreement and find there is no provision under the agreement or the addendum to that agreement in which the

landlords and tenants have agreed upon a time frame or a schedule for the tenants to complete the renovations to the rental unit or for the landlords to provide supplies for the renovations. The addendum states that the landlords will supply all agreed upon supplies but there is no mention of a time frame in which these supplies will be provided. While I accept the tenants' frustration that they are willing to do the work as agreed and the landlords have failed to provide the materials for the tenants to do the work, without a written agreement in place between the parties setting out a work schedule then the landlords have not failed to comply with the tenancy agreement. This section of the tenants application is therefore dismissed without leave to reapply.

With regard to the tenants application for the landlords to make repairs to the unit, site or property; the tenants have stated that they do not necessary want the landlords to do the repairs but the tenants seek an Order for the landlords to provide supplies for the tenants to make repairs to the remainder of the list of renovations as documented on the addendum to the tenancy agreement. The tenants also seek the materials to repair the deck to ensure it is made safe.

There is no provision under the *Act* for me to Order the landlords to provide supplies to the tenants under section 32 of the *Act*. However, the landlords do have an obligation under section 32(1) of the *Act* to 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.

While I have a list of the required renovations I have no other information with the exception of the deck to determine if these renovations are cosmetic or for health and safety and housing standards. Consequently I **order** the landlord to ensure they comply with s. 32 (1) of the *Act* and ensure the required repairs to the rental unit for health, safety and the compliance of housing standards required by law are investigated with the tenants. If any



repairs are necessary to comply with section 32 (1) of the *Act*, that these repairs are completed in a timely manner.

With regard to the tenants request to set conditions on the landlords right to enter the rental unit; I refer the parties to s. 29 of the *Act* which states:

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Consequently, I find from the testimony presented today that the landlords have complied with s. 29 of the *Act* and the tenants application to suspend or set conditions on the landlords right to enter is dismissed with leave to reapply. However, in light of the fact that the tenants have young children who are in bed before 9.00 p.m. at night I strong recommend that the landlord restricts the times of entry to before 8.00 p.m. in order to respect the bedtime routine of the tenants children. The tenants argue that there has been an occasion where the police have been called to remove the landlord RS, if there are any further incidents resulting in the removal of a landlord due to behavioural issues when inspecting the property, the tenants are at liberty to file another application to request the suspension of the landlords right to enter the rental unit. The landlords must conduct themselves in a manner that does not violate the tenants' right to quiet enjoyment of the rental unit in any future visits to the unit.

With regard to the tenants application to reduce rent for repairs, services or facilities agreed upon but not provided; I find the tenancy agreement allows the tenants internet use up to \$50.00 per month, I am satisfied with the tenants claim that this service was lost at the beginning of August, 2012 I am also satisfied that the tenants have not had the use of the dishwasher since the start of the tenancy (six months). However I have no corroborating evidence to show that the tenants informed the landlords of the loss of their dishwasher to enable the landlords to make repairs. Consequently, it is my decision that the tenants may reduce their rent to the sum of \$50.00 a month for the loss of the internet from August, 2012 and may reduce their rent by \$50.00 per month from September 01, 2012 for the loss of the dishwasher. These rent reductions may continue until such a time as the landlords reinstate the internet service and repair the dishwasher. I have deducted **\$50.00** for the tenants rent reduction for the loss of the internet from any monetary award due to the landlord for August rent.

The tenants also seek to reduce their rent for storage. However the tenancy agreement does not specify which storage space is the tenants and I am satisfied with the landlords' testimony that the storage space for the tenants is the garage and not the space occupied

by the landlord's belongings. Consequently this section of the tenants claim is dismissed without leave to reapply.

The landlords have requested that a date is agreed upon for rent to be paid in the event the tenancy continues. The tenants do not agree to any changes to the tenancy agreement. I refer the landlords to s.14 (2) of the *Act* which states:

14(2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

Consequently, as the tenants do not agree to the alteration to the tenancy agreement, the tenancy agreement in place remains valid and future rent must be paid by the last day of each month.

As both parties have been partially successful with their claims I find both parties must bear the cost of filing their own applications.

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$5,477.20 (\$5,527.20 - \$50.00 rent rebate for August)** pursuant to s. 67 of the *Act*. The order must be served on the tenants and is enforceable through the Provincial Court as an order of that Court.

The tenant's application is allowed. The 10 Day Notice to End Tenancy dated July 08, 2012 is cancelled and the tenancy will continue.

I HEREBY ORDER the tenants to reduce their rent from September 01, 2012 by \$50.00 per month until the landlord reinstates the internet and by a further \$50.00 per month until the landlord repairs the dishwasher pursuant to s. 65 of the *Act*.

I HEREBY ORDER the landlord to comply with s. 32(1) of the *Act* with regards to repairs to the rental unit.

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: September 05, 2012.

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Residential Tenancy Branch