



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

*OPR, MNR, CNR, FF*

### **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order of possession pursuant to Section 55.
- A monetary order for rent owed and loss of revenue, pursuant to Section 67.
- Reimbursement for the cost of the application.

The tenant applied for the following:

- An order to cancel the notice to end tenancy for rent, pursuant to Section 46.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

At the outset of the hearing, the parties advised that the tenant had vacated the rental unit on January 5, 2013. I find the portion of the landlord's cross application seeking an Order of Possession is now moot, as is the tenant's application, because the tenant has already relinquished possession of the rental unit to the landlord.

The landlord is still ready to proceed with respect to the monetary claim against the tenant seeking payment of the remaining security deposit and the rental arrears.

### **Issue to be decided**

Is the landlord entitled to a monetary order against the tenant for the remaining security deposit and rental arrears?

### **Background and Evidence**

The tenancy started on July 15, 2012 with rent set at \$1,200.00 per month and part of the \$600.00 security deposit was paid in the amount of \$100.00.

The landlord testified that, because the tenant failed to pay the security deposit at the start of the tenancy, they are claiming payment of the remaining \$500.00 still owed for the security deposit.

The landlord testified that they are also seeking monetary compensation for rental arrears left by the tenant. The landlord testified that, on December 1, 2012, the tenant only paid \$800.00 of the \$1,200.00 rent that was owed for the month of December. The landlord testified that the tenant deducted \$400.00 from the rent without permission of the landlord and this amount is still outstanding.

The tenant testified that, when they moved into the unit, they found that a warm temperature could not be maintained in the unit and they immediately made a complaint to the landlord. The tenant testified that they also alerted the landlord to the fact that there was no insulation in the attic and pointed out that the space needed to be properly insulated. The tenant testified that the landlord agreed to fund the purchase of insulation. According to the tenant, the landlord also agreed to the tenant installing the batting and then be compensated in the amount of \$400.00 for this labour, to be deducted from the tenant's rent.

The tenant testified that installed insulation and did deduct the labour cost of \$400.00 from their December rent as agreed. According to the tenant, after the work was already done, the landlord then attempted to renegotiate the previously agreed-upon compensation and finally reneged on the agreement altogether.

The tenant stated that they only realized the landlord was demanding repayment of the \$400.00 withheld from the rent, when they suddenly received a Ten Day Notice to End Tenancy for Unpaid Rent. The tenant testified that they had initially filed for dispute Resolution to challenge the landlord's eviction. However, they then decided to comply with the Notice by moving out on January 5, 2013. The tenant testified that they do not owe the landlord any rental arrears.

The landlord acknowledged that there was some discussion in November 2012 about the tenant assisting with the insulation project. The landlord also testified that that he made a commitment to pay for the insulation. According to the landlord's agent, who also participated in the hearing, the landlord had intended to accompany the tenant to the vendor to purchase the materials, but the tenant was always unavailable.

The landlord's agent testified that on December 1, 2012, when she went to collect the \$1,200.00 rent from the tenant on behalf of the landlord, the tenant informed the agent

that there was an agreement with the landlord allowing the tenants to reduce the rent by the cost of their labour in the amount of \$400.00. The agent stated that, on the basis of the information provided by the tenant, she issued them a receipt showing that a payment of \$800.00 was accepted for rent and made a handwritten notation stating, "*400.00 taken off rent for Labour*". A copy of this receipt is in evidence.

According to the landlord's agent, when she later mentioned this \$400.00 labour reduction to the landlord, he informed her that she had been misled by the tenant and stated that there was no such agreement made between the landlord and the tenant to reduce the rent payment by \$400.00 for the labour of installing the insulation.

The landlord gave first-hand testimony that the tenant had refused to cooperate and would not allow the landlord access to confirm that the insulation job was completed.

The landlord's agent also testified that they did not believe that the ceiling actually needed to be insulated at all because the pre-purchase disclosure statement dated May 15, 2012, included a declaration by the previous owner that he believed, to the best of his knowledge, that the ceilings of the building were previously insulated. A copy of the disclosure statement was in evidence.

The landlord's position is that the tenant wrongfully withheld \$400.00 from the rent owed for December and should be ordered to pay.

### **Analysis:**

In regard to the landlord's claim for a monetary order in compensation for the balance of the tenant's security deposit, I find that payment of the security deposit is governed by section 17 of the Act which provides that a landlord may require, in accordance with the Act and the regulations, that a tenant pay a security deposit as a condition of entering into a tenancy agreement, or as a term of a tenancy agreement.

However, in this instance the tenancy has now been permanently terminated. Therefore the terms of the tenancy agreement relating to the tenant's obligation to pay the deposit are no longer in force as there is no tenancy. Accordingly, the portion of the landlord's claim seeking payment of the outstanding security deposit funds must be dismissed.

In regard to the rental arrears, I find that section 26 of the Act states that rent must be paid when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. If the tenant does not pay rent when it is due, the landlord can issue a Notice to End Tenancy for Unpaid Rent under section 46 of the Act. I find that the landlord issued a Ten Day Notice to End Tenancy

for Unpaid Rent based on the landlord's position that the tenant had failed to pay a portion of the rent due on December 1, 2012.

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and either party may make an application for dispute resolution if they cannot resolve a dispute informally.

Section 58 of the Act provides that, except as restricted under this Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

- (a) rights, obligations and prohibitions under this Act;
  - (b) **rights and obligations under the terms of a tenancy agreement that**
    - (i) are required or prohibited under this Act, or
    - (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or the use of common areas or services or facilities.
- (my emphasis)

I find that there was a written tenancy agreement setting the rental rate at \$1,200.00 per month and it follows that this amount must be paid each month under the contract.

I find that section 32 of the Act imposes responsibilities on the landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. I find that this would include investigating and addressing complaints about repairs and services such as deficient heat.

In this instance, when the tenant brought up some serious concerns about heating problems in the unit, I find that the landlord was required to follow up on these complaints to find out whether or not there was a genuine deficiency and if so, to take steps to rectify it. I find that it is the landlord alone who has the authority to decide *how* to investigate or assess the problem and what steps should be taken to rectify the particular problem.

Provided that the intervention chosen by the landlord to deal with the complaint is timely and reasonable, then the landlord's responsibility under section 32 of the Act, to maintain health, safety and housing standards required by law, would likely have been met.

In this instance, I find that, instead of engaging a heating expert to look into the alleged heat-loss complaint made by the tenant in November 2012, it appears that the landlord chose to pursue the tenant's suggestion that the attic should be insulated. It seems that both parties may have seen this measure to be a possible solution.

Given the above, I find it clear that some kind of mutual discussion or negotiation did take place between this landlord and the tenant, pertaining to the purchase and installation of attic insulation. However, the precise terms that were reached based on the verbal discussion are not clear as the two participants gave different versions of the agreement.

In regard to the landlord's allegation that the tenant refused to permit the landlord access to inspect the attic, I find that Section 29 of the Act states that a landlord must not enter a rental unit for any purpose unless the tenant gives permission at the time of the entry **or at least 24 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; or an emergency exists and the entry is necessary to protect life or property. Section 29 (2) of the Act states that a landlord may inspect a rental unit monthly by following the above steps.

I find that, under the Act, the landlord was always at liberty to inspect the premises and monitor the work being done by the tenant or tradespersons.

Each party provided conflicting testimony about how the insulation project was supposed to unfold and how much the tenant was supposed to be compensated for the labour. I find the testimony from the landlord to be somewhat confusing. I was not able to determine whether or not the landlord had an expectation that the tenant would do the labour in installing the batting in the attic, nor whether the tenant was to be compensated and, if so, how much.

However, with respect to claims for monetary compensation, it is the party claiming compensation who bears the burden of proof. I find that, in this case, it is the landlord who must prove that there were genuine rental arrears and that a monetary order against the tenant is warranted.

I find that one of the key pieces of documentary evidence submitted by the landlord was a rent receipt showing that, on December 1, 2012, the tenant was granted a \$400.00 deduction off of the rent "*for Labour*". I find that this evidence actually supports the tenant's claim, despite the landlord's explanation that the receipt was issued in error, based on faulty information from the tenant.

On a balance of probabilities and based on the evidence before me, I find that the landlord has not sufficiently satisfied the burden of proof to establish that the tenant defaulted on rent owed for the month of December 2012 and that the landlord is entitled to a monetary order against the tenant.

Accordingly, I hereby dismiss the landlord's application in its entirety without leave to reapply. The tenant's application is also dismissed as the issue under dispute is moot.

As this tenancy has ended, I find that the tenant's \$100.00 security deposit must be administered in accordance with section 38 of the Act.

### **Conclusion**

The tenant's application is dismissed as the tenant vacated in accordance with the Ten Day Notice. The landlord is not successful in the cross application and it is also dismissed.

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: January 15, 2013

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Residential Tenancy Branch

