



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

OPL, OPC, CNL, CNC, MNDC, RR, OLC, ERP, PSF, MND, MNSD, FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the tenant, seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use, Dispute an Additional Rent Increase, to obtain orders to force the landlord to comply with the Act, make emergency repairs and provide services and facilities required by law. The tenant was also seeking a rent abatement to compensate the tenant for the lack of repairs and facilities.

The hearing was also convened to deal with a cross application by the landlord seeking an Order of Possession based on a Two-Month Notice to End Tenancy for Landlord's Use and based on a One-Month Notice to End Tenancy for Cause.

Despite the fact that the landlord filed a cross application to be heard jointly with the tenant's application and, despite having been served with the tenant's hearing notice by registered mail sent on May 24, 2013, the landlord failed to attend the conference call. The tenant provided the Canada Post registered mail tracking number to verify service.

### **Preliminary Matter**

The tenant testified that, after they had filed their application to dispute the landlord's Two Month Notice to End Tenancy for Landlord's Use on May 24, 2013, the landlord then issued a One-Month Notice to End Tenancy for Cause on May 29, 2013.

The tenant testified that they believe that this Notice and other Notices repeatedly issued by the landlord seeking to terminate their tenancy are reprisals for the tenant complaining about lack of repairs and services and their efforts to compel the landlord to follow the Act.

The tenant requested an amendment to their application to include a request to dispute the One-Month Notice to End Tenancy for Cause dated May 29, 2013.

I find that the landlord had issued a Two Month Notice to End Tenancy for Landlord's Use on May 14, 2013 and the tenant filed to dispute this on May 24, 2013 and served the landlord with the Notice of Hearing. After this, on May 29, 2013, and prior to the hearing date set to consider the tenant's request to cancel the Two Month Notice to End Tenancy for Landlord's Use, the landlord subsequently issued another Notice, that is a One-Month Notice to End Tenancy for Cause.

I find that the tenant's request to amend the application should be granted as the landlord would not be prejudiced by the opportunity to deal with enforcement or cancellation of both of their Notices at this hearing. In fact, the landlord's cross application was seeking enforcement of both the One-Month Notice for Cause and the Two Month Notice for Landlord's Use.

The amendment is allowed and the tenant's request to cancel the One-Month Notice to End Tenancy for Cause will also be determined at this hearing.

### **Issue(s) to be Decided**

The issues to be determined based on the testimony and the evidence are:

1. Is the landlord entitled to an Order of Possession based on the Two Month Notice to End Tenancy for Landlord's Use, or should the Notice be cancelled as requested by the tenant?
2. Is the landlord entitled to an Order of Possession based on the One Month Notice to End Tenancy for Cause, or should the Notice be cancelled as requested by the tenant?
3. Should the landlord be ordered to cease trying to impose noncompliant rent increases?
4. Is the tenant entitled to compensation in the form of a rent abatement or monetary order?
5. Should the landlord be ordered to make repairs and restore services and facilities required by law?

### **Background and Evidence**

The landlord was not in attendance to present the evidence supporting their cross application requesting Orders of Possession based on the One-Month and Two Month Notices.

In regard to the tenant's application, the tenant testified that the tenancy began in September 2007 and current rent is \$650.00. A security deposit of \$325.00 was paid.

According to the tenant:

1. The landlord's Two Month Notice to End Tenancy for Landlord's Use and the One Month Notice to End Tenancy for Cause have no basis. The tenant's position is that neither Notice has any merit.
2. The tenant has not had functioning heat in the unit during the last two winters after their baseboard heaters stopped working and the landlord has ignored requests to repair these.
3. The landlord neglected to investigate and eradicate mould formation in portions of the unit, despite repeated requests from the tenant and repeated promises by the landlord to take action.
4. The landlord has attempted to impose a non-compliant rent increase.

Submitted into evidence were photos, copies of communications, written testimony, a copy of the One Month Notice to End Tenancy for Cause, a copy of the Two Month Notice to End Tenancy for Landlord's Use and a copy of a letter from the landlord purporting to be a notice of rent increase.

The tenant testified that both the One Month Notice and the Two Month Notice were issued as reprisals against the tenant because they had chosen to make complaints to the landlord regarding mould and lack of heat.

The tenant testified that the One Month Notice to End Tenancy for Cause has no merit and should be cancelled.

The tenant testified that, although the landlord issued the Two Month Notice to End Tenancy for Landlord's Use, the landlord plans to re-rent the unit, and does not intend to utilize it for a family residence as claimed. The tenant has raised the issue of bad faith and is requesting that the Two Month Notice to End Tenancy for Landlord's Use be cancelled.

The tenant testified that they had complained about both the heating system and the mould numerous times during the tenancy without any intervention by the landlord. The tenant made reference to evidentiary material including a letter of complaint to the landlord.

In regard to the lack of heat, the tenant stated that in the winter of 2010, the baseboard heaters suddenly stopped working and this was reported to the landlord. The tenant acknowledged that they should likely have pursued dispute resolution to resolve the heat deficiency two years ago when it occurred. However, according to the tenant, they wanted to avoid controversy and stay on good terms with their landlord. The tenant stated that they have functioned in the past during the colder months by using space heaters, but feel that the landlord has an obligation to provide adequate heat.

With respect to the mould, the tenant provided photographic evidence and stated that the mould was present from the start of their tenancy, at which time the landlord apparently acknowledged it as a problem and made a commitment to take care of it.

The tenant is seeking to compel the landlord to repair the heat and resolve the chronic mould issue. The tenant is also seeking to be compensated in the amount of \$3,800.00 as a retro-active rent abatement for the landlord's failure to complete repairs and eradicate the mould.

With respect to the landlord's application, the landlord did not attend to present their evidence in support of the two notices.

### **.Analysis**

#### **Notices to End Tenancy**

The landlord did not attend to present their evidence in support of the One Month Notice to End Tenancy for Cause and the Two Month Notice to End Tenancy for Landlord's Use. I accept the tenant's testimony that neither of these Notices are warranted. I find that the One Month Notice to End Tenancy for Cause dated May 29, 2013 and the Two Month Notice to End Tenancy for Landlord's Use dated May 24, 2013 must be cancelled.

#### **Rent Increase**

I find that, under section 430f the Act, a landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing.

The rent increase must also be on the prescribed form.

In this instance, I find that the landlord issued a rent increase in a manner and a form contrary to the Act and regulations and therefore I find that no valid, enforceable Notice of Rent Increase exists.

### Rent Abatement and Orders to Comply

In regard to an Applicant's right to claim damages from another party, section 7 of the Act states that, if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants the Arbitrator authority to determine the amount and to order payment under these circumstances.

In a claim for damage or loss under the Act, the party making the monetary claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

#### Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

I find that section 32 of the Act imposes a responsibility on the landlord to 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 the landlord has an obligation under the Act to provide adequate heat to the unit and has failed to comply with the landlord's responsibilities under the Act

I find that the tenants are alleging that the heat stopped in March 2010 and have claimed a retro-active rent abatement of \$100.00 per month dating back 38 months.

In this regard, I find that, after reporting the deficiency to the landlord, the tenants also had an obligation to minimize their loss under section 7(2) of the Act, by pursuing the matter through dispute resolution if necessary. I find that the

monetary claim does not meet element 4 of the test for damages and must therefore be dismissed.

With respect to the tenant's complaints about the mould problem, I find that, to meet their obligation under section 32 of the Act, the landlord would need to respond to a report of a health-related problem, such as mould, without undue delay. I find that the landlord did not respond to the tenant's report of mould by immediately contracting a qualified mould inspector to determine whether or not the unit was compromised by mould growth and to find out if the tenant's complaint had any merit.

I find that, a failure to ensure that the home was adequately heated, in addition to being a violation of section 32 of the Act, could cause cold spots which may facilitate mould growth within a rental unit, particularly if it is below grade, such as a basement suite.

Given the above, I find it necessary to order the landlord to restore heat to the rental unit and to engage a qualified mould expert to assess the situation. I further order that the landlord follow any recommendations given by a professional mould remediation specialist.

I hereby grant the tenants a rent abatement of \$75.00 per month going forward. I order that the rental rate to be paid by the tenant will be \$575.00 per month and this rate will continue until all of the conditions below have been met:

1. The landlord restores working baseboard heaters in each room of the rental unit.
2. The landlord hires a qualified mould specialist to assess the unit and generate a written report with recommendations.
3. The landlord gives a copy of the written report from the mould inspector to the tenants.
4. The landlord follows and completes the recommendations of the mould expert.

I find it necessary to order that the rent will continue to be \$575.00 per month until the month following the month in which the above requirements are satisfied, at which time the rental rate to be paid will return to \$650.00 per month.

Based on the evidence before me, I hereby dismiss the landlord's application seeking an Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use dated May 14, 2013 and the One Month Notice to End Tenancy for Cause dated

May 29, 2013. I hereby grant the tenant's request and order that the Notices be cancelled and of no force nor effect.

Based on the evidence before me, I hereby cancel the landlord's purported notice of rent increase and find that the rent may not be increased unless, and until, a valid compliant Notice of rent increase is issued under the Act and Regulation and properly served on the tenant..

Based on the evidence before me, I hereby order the landlord to restore working baseboard heaters in each room of the rental unit. I further order that the landlord hire a qualified mould specialist to assess the unit and generate a written report with recommendations about the remediation of the mould and give a copy of this written report to the tenants and that the landlord then must follow the recommendations of the mould expert, taking appropriate action as required.

Finally, I hereby order that the rent for this unit will be reduced by \$75.00 per month beginning on July 1, 2013, to continue to be \$575.00 per month until the month following the month in which the above requirements are satisfied, at which time it will return to \$650.00 per month.

I grant the tenant monetary compensation for the \$50.00 cost of this application which may be deducted off of the next rental payment owed to the landlord.

The remaining issues in both applications are dismissed.

### **Conclusion**

The tenants are partially successful in this application and are granted a rent abatement and an order against the landlord to restore heat and address the mould complaint.

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: June 18, 2013

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Residential Tenancy Branch