



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

Dispute Codes      CNR, RR, MNR, MNDC, MNSD, OPR, FF

### Introduction

This is an application by the tenant to cancel a Ten Day Notice to End Tenancy for Unpaid Rent. In addition, the tenant is also seeking monetary compensation in the form of a retro-active rent reduction for devalued tenancy and the cost of repairs completed by the tenant.

This is also a cross application by the landlord seeking to terminate the tenancy based on a Ten Day Notice to End Tenancy for Unpaid Rent , a monetary order for rental arrears owed for October and November 2013 and accrued utilities owed.

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 affirmed testimony and relevant evidence that was properly served.

At the outset of the hearing the tenant advised that they are now in the process of vacating the rental unit. Therefore, I find that the portion of the tenant's application requesting that the 10-Day Notice to End Tenancy for Unpaid Rent be cancelled and the landlord's request for an Order of Possession are moot. The monetary claims by both parties will still be heard.

### Issues(s) to be Decided, Landlord's Application

- Is the landlord entitled to monetary compensation for rental arrears?
- Is the landlord entitled to monetary compensation for utilities?

### Issues(s) to be Decided, Tenant's Application

- Is the tenant entitled to monetary compensation for costs of repairs?
- Is the tenant entitled to a rent abatement for services and facilities not supplied?

## **Background and Evidence**

### **Landlord's Application**

This tenancy began on July 1, 2011 and was to be a fixed term ending on June 30, 2013 with the option of extending the tenancy further. The rent of the unit was \$2,100.00 and a security deposit of \$1,000.00 was paid. The premises consisted of a three-level home.

Both parties testified that, as part of the tenancy agreement, the landlord was required to do some renovations and repairs to portions of the main floor area, the exterior and out buildings and to finish the stairways and unfinished portions of the lower and upper floors.

The tenancy agreement contains a section on the final page of the addendum, titled, "**Must be completed July 1, 2011**"

Listed under this heading are tasks that were to be completed by the landlord including:

#### *"Top Floor:*

- *Remove fridge*
- *Finish sheet rock, paint and trim*
- *Install non-structural shelving/closet*
- *Install stairs 100% completed to code with finished drywall and either laminate, hardwood or carpet.*

#### *Main floor:*

- *Kitchen cupboards need new matching hardware (have tenant select cost-effective type)*
- *Install pantry type shelves in closet and fix door to match as per discussed*
- *Install matching glass and wood cabinet door on dining room cabinet*
- *Second bedroom needs to be painted after closet and stairway is complete. Tenant to choose colour.*
- *\*\*Stairs as listed in above section must be complete and must be at code for the safety of the tenants children. For security reasons and stairs being installed in sunroom. The front screen door must be replaced with secure door and proper front door lock.....*

- *The chimney will be cleaned by a certified company before November 1, 2011 at the landlord's expense. A copy of the receipt will be given to the tenant for the purpose of rental insurance.*

*Basement:*

- *Both bedrooms will be repainted to match the rest of the lower level*
- *All stickers in the second room will be removed*
- *Stairs will be 100% complete and covered in laminate, hardwood or carpet*

*Deck:*

- *Sand and paint deck with one matched gate at all stairwell entrances*
- *\*If stairs have to be removed. Upper and middle deck will be kept in place and 100% completed. As per inspection door may become a window*

*Shed/garage:*

- *Either removed or 100% fixed. This is a safety issue for children.*
- *New flooring, new doors and glass replaced. If removed soil and sod will be installed in place of*

*Lawn/Yard area:*

- *New soil and sod laid to correct pulled up driveway(No seed).*
- *Back gate replaced and matching deck*
- *All rock, garbage and wood debris removed from under deck and back yard.*
- *Back yard landscaped with new soil and seed*
- *Tenant to provide maintenance to yard. Landlord to cover expenses*

*Outside of home:*

- *Side hole to be filled and matching with the stucco*
- *Front of home (below top window) to be filled and matching stucco.*
- *Remove awning and front glass piece. To work with contractor with agreeable solution*
- *Lawn and yard will be mowed, weeded and edged. “*

The landlord testified that, because the above improvements were not completed before the tenant moved in, the parties had verbally agreed that the tenant's rent would be reduced from \$2,100.00 to \$1,000.00 per month, which would continue until the landlord completed the remainder of the promised improvements.

The landlord testified that all of the improvements were not completed by the stated date of July 1, 2011 but were finally completed near the beginning of 2013. The landlord testified that the tenant started paying full rent of \$2,100.00 at that time.

The landlord testified that as of July 1, 2013, when the two-year lease expired, and was slated to be extended, the tenant started to pay \$2,200.00 per month as they agreed under contract.

The landlord testified that the tenant had never signed the new lease "extension". The landlord testified that the tenant gave Notice to vacate effective the end of November 2013, however, the tenant failed to pay \$2,200.00 rent due on October 1, 2013 and a Ten Day Notice to End Tenancy for Unpaid Rent was issued and served on October 7, 2013.

A copy of the October 7, 2013 Notice is in evidence and indicates that the arrears owed for rent are \$2,200.00 and utility arrears of \$1,216.47 are also owed. According to the 10-Day Notice, a written demand for the utilities was issued to the tenant on October 7, 2013.

The landlord testified that the tenant also failed to pay \$2,200.00 rent for November 2013 and the landlord is claiming total compensation of \$7,147.70 for rent and utilities, including estimated costs of utilities for the month of November 2013.

The tenant acknowledged that they failed to pay rent for October and November, 2013. The tenant pointed out that they had submitted a list of expenditures for some repairs and improvements that they had completed on the landlord's behalf and, as discussed with the landlord's agent, they expected to be credited with the value against the rent that was owed.

The tenant stated that, prior to receiving the 10-Day Notice to End Tenancy for Unpaid Rent, they did not receive any invoices or demands for payment for the utilities that the landlord is now claiming are owed. The tenant testified that their hydro costs were also unfairly inflated by renovation work being done by the landlord's construction crews.

### **Tenant's Application**

The tenant testified that, although the landlord had committed to finishing the rental unit, as detailed on the tenancy agreement, the rental unit was not completed when they first took occupancy. The tenant testified that the landlord again made a commitment to have the work done without delay and reduced the

rent from \$2,100.00 to \$1,000.00, because of the deficiencies. The tenant pointed out that during their tenancy, they could not utilize the lower and upper floors because they were not finished.

The tenant testified that the repair and renovation activities progressed too slowly and this interrupted their right to access and quiet enjoyment of the home. The tenant testified that they were compelled to complete some of the repairs and improvements themselves, particularly those that were related to issues that posed a hazard, interfered with the family's use and occupation of the rental unit, or were urgently required.

The tenant testified that, after waiting for the landlord to complete these key tasks, the tenants finally arranged to have them done or took on the jobs by themselves. Examples of some of these tasks are, removal of garbage that was left on site by previous tenants, buying a functional dishwasher and stove, installing safe lighting, having the chimney swept, dealing with vermin, placing gravel under the deck, fixing the contaminated driveway surface and other outstanding repairs and improvements, some of which, according to the tenants, were not even included in their claim for compensation.

The tenant stated that they had ongoing communication with the landlord's agent about the needed repairs and renovations and believed that they would be compensated for assisting the landlord with the completion of needed tasks.

The tenant testified that they began to pay the full rent of \$2,100.00 in January 2013, despite the fact that all of the promised improvements were still not completely done. The tenant testified that the landlord then began charging them \$2,200.00 based on a new tenancy agreement, that had been drawn up by the landlord, which they never signed.

The landlord argued that they did not authorize the tenant to complete any of these repairs or improvements and furthermore, some of the renovations were considered by the landlord to be overly costly and unnecessary. The landlord testified that there was no dishwasher included as a feature in the suite and the stove was functioning properly, as far as they knew. The landlord testified that installing expensive new light fixtures was also unnecessary, as the unit already had lighting. The landlord stated that the amount of the tenant's monetary compensation for some tasks was exorbitant.

The landlord pointed out that they would have eventually addressed all of the promised tasks without the tenant's intervention. According to the landlord, they were doing their best to meet their obligations under the tenancy agreement.

However, the landlord did agree with some portions of the tenant's claim for compensation for certain tasks.

According to the landlord, by the first part of 2013, all of the improvements that they committed to were finally completed.

The tenant disputed this testimony and stated that there were still outstanding issues and, in fact, because of this, they decided to end their tenancy and move.

The tenant is seeking to allocate the compensation for all of their costs towards rent including:

- Labour and material for mud & painting downstairs room
- Installing a hall closet
- Building and installing gates
- Lawn repair
- Gravel under deck
- Installing a pantry
- Purchase of replacement dishwasher
- 50% cost of purchasing a new stove
- Junk removal
- Vent covers and door knobs
- New lighting fixtures purchased and installed
- Vermin control

The total amount of compensation being claimed by the tenant is \$4,040.20.

### **Analysis Landlord's Monetary Claim**

#### **Rent**

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.

With respect to the amount of rent charged, I find that the tenancy agreement specifies that the rental rate is \$2,100.00 per month. I accept the testimony of the parties that the rent was reduced by verbal agreement to \$1,000.00 per month for a period of time and early in 2013 was restored to the normal rate of \$2,100.00 chargeable under the tenancy agreement.

With respect to the \$100.00 rental increase imposed on the tenant as of July 1, 2013, I do not accept the landlord's reasoning that the old tenancy agreement

expired and a new tenancy agreement with higher rent was negotiated. I find that the terms of the contract provide that, at the end of the fixed term, the tenancy would continue as a month-to-month tenancy or in the alternative that an extension could be granted.

I find that, regardless which of these two options were applied in this case, under the Act the landlord would not be permitted to impose a rent increase nor build an increase into the tenancy agreement.

Section 43 of the Act states that a landlord may only impose a rent increase up to the amount calculated in accordance with the regulations, or ordered on an application for an additional rent increase or agreed to by the tenant in writing.

The Notice of rent increase must always be on the prescribed form.

Section 42 of the Act states that a landlord must not impose a rent increase for at least 12 months after the date on which the tenant's rent was first established under the tenancy agreement or after the last rent increase was made.

The landlord must still follow the procedure required under the Act, even if the tenant has agreed in writing to pay a higher rent increase than the amount calculated in accordance with the regulations.

If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

I find as a fact that the landlord has never issued a valid and compliant rent increase to this tenant. Accordingly, I find that the rate for the tenant's rental unit remained at \$2,100.00 until the end of the tenancy in November 2013. I find that the tenant had paid \$2,200.00 per month for the months of July, August and September 2013, thereby over paying the allowable rent by \$300.00 in total.

Pursuant to section 26 of the Act, I find that the landlord is entitled to compensation for \$2,100.00 rent owed for October and \$2,100.00 rent owed for November 2013 for a total of \$4,200.00. After deducting the \$300.00 overpayment, I find that the landlord is entitled to total compensation of \$3,900.00 for rental arrears.

### **Utilities**

In regard to the claim for utilities owed, I accept that, according to the tenancy agreement, the tenant is responsible for paying their own utilities. Section 46(6) of the Act provides that, if a tenancy agreement requires the tenant to pay utility charges to the landlord, and they remain unpaid more than 30 days after a

written demand for payment has been issued, then the landlord may treat the unpaid utility charges as unpaid rent and may serve the tenant with a Ten Day Notice to End Tenancy for Unpaid Rent and Utilities.

In this instance, I find that the landlord issued the 10-Day Notice to End Tenancy for Unpaid Rent and included outstanding utilities of \$1,216.47. However, I find that the landlord included the utilities on the Notice prior to giving the tenant a written demand and 30 days in which to pay the demand.

In any case, I find that the landlord failed to provide sufficient evidence of the utility charges. I also accept the tenant's testimony that part of the utility usage was due to the landlord's use in repairing and renovating the premises.

Given the above, I find that the portion of the landlord's application relating to the monetary claim for utilities must be dismissed. Therefore I find that the landlord is entitled to total compensation of \$3,900.00 for rental arrears.

### **Analysis Tenant's Claims**

In regard to the tenant's claim for the cost of painting, 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.

Section 6 of the Act also states that the rights, obligations and prohibitions are enforceable between a landlord and tenant under a tenancy agreement and either party has the right to make an application for dispute resolution if they cannot resolve a dispute over the terms of their tenancy agreement.

I find that there are clear terms in the written tenancy agreement that certain repairs and improvements must be completed by the landlord. I find that the landlord delayed completing the tasks to which they had agreed for a lengthy period of time.

An Applicant's right to claim damages from another party is dealt with under section 7 of the Act which states that if a landlord or tenant does not comply with



the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants an Arbitrator the 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 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.

Although there is nothing in the written tenancy agreement stating that the parties agreed that the landlord would reimburse the tenant for any repairs and renovations they completed, I find that the tenant did fulfill some obligations that the landlord had committed to do under the contract, but failed to deliver. I find that a portion of these tasks were, on a balance of probabilities, necessary for the tenants to function in the unit.

I find that the tenants received a substantial reduction in the rent over a period of time in recognition of this fact. However, despite this compensation, I find as a fact that the delay by the landlord in complying with the tenancy agreement must be considered as a violation of the agreement and the tenant did suffer a loss as a result.

I accept the tenant's testimony that they suffered a loss in value of the tenancy as well as expenditures as a result of the landlord's delays in fulfilling the terms of the tenancy agreement. I also accept the tenant's testimony that they decided to end their tenancy, due to the landlord's failure to fully renovate the residence as promised.

For this reason, I find that the tenant is entitled to compensation of \$2,850.00 for the loss of value of the tenancy and cost of renovations.

I find that the landlord is entitled to \$3,900.00 for unpaid rent for October 2013 and November 2013 and the tenant is entitled to compensation of \$2,850.00 rent abatement for the cost and inconvenience of the repairs they completed.

In setting off the two monetary amounts granted to the landlord and tenant, I find that, after subtracting the \$2,850.00 awarded to the tenant, the landlord is entitled to the remainder of \$1,050.00. I order that the landlord retain the tenant's \$1,050.00 security deposit in full satisfaction of the claim.

Each party is responsible to pay their own costs of the applications.

#### Conclusion

Both parties are partially successful in the applications. The landlord and tenant are granted monetary compensation which was set off against each other and the landlord is ordered to retain the tenant's security deposit in full satisfaction of the landlord's claim.

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: November 26, 2013

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Residential Tenancy Branch