



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDC, OLC, RP, OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy, a monetary order and an order compelling the landlord to comply with the Act and perform repairs. The landlords filed a cross-application requesting an order of possession, a monetary order and an order to retain the security deposit. Both parties seek to recover the filing fees paid to bring their respective applications.

The tenant submitted to the Residential Tenancy Branch approximately 106 pages of evidence, including photographs, 7 calendar days (4 business days) before the hearing. The landlords advised that they did not receive this evidence until 4 calendar days before the hearing and did not have adequate opportunity to respond. The evidence dealt exclusively with the tenant's monetary claim.

Rule 2.3 of the Residential Tenancy Rules of Procedure gives me authority to dismiss unrelated disputes contained in a single application. I found it appropriate to sever the tenant's monetary claim as it was unrelated to the question of whether the tenancy should end and whether rent had been legally withheld, which were the primary issues before me. The tenant's monetary claim is dismissed with leave to reapply.

At the outset of the hearing, the tenant introduced 2 witnesses. It became apparent during the course of the hearing that the testimony to be provided by these witnesses was not relevant to the primary issues as identified above and I therefore advised the tenant that I did not need to hear from his witnesses.

The tenant submitted 4 pages of evidence approximately 90 minutes prior to the hearing. I have not considered this evidence as I did not receive it until after the hearing had concluded and I did not have the opportunity to confirm that the landlord had received it.

Issue(s) to be Decided

Should the notice to end tenancy be set aside?

Is the tenant entitled to orders compelling the landlords to comply with the Act and perform repairs?

Are the landlords entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in 2009 and that the tenant also rents a second rental unit in the same building. The landlords testified that the rent payable for the subject rental unit is \$1,608.00 while the tenant testified that the rent payable for the subject unit is \$1,660.00. The tenant submitted a copy of a notice of rent increase which confirms that the rent is \$1,608.00, but he insisted that the notice was incorrect. The parties further agreed that the tenant did not pay rent for the months of October and November and that on November 2, the tenant was served with a 10 day notice to end tenancy for unpaid rent (the "Notice"). They further agreed that the tenant has not paid rent for the month of December.

The tenant testified that he has been performing repairs and making improvements to the building throughout the tenancy and testified that V.J., who acted as the property manager on behalf of the landlords until August 2013, told him he should withhold rent because the rental unit was infested with bedbugs. The tenant acknowledged that the current property manager had not at any time told him to withhold rent.

The tenant alleged that he has performed considerable repairs and upgrades to the property throughout the tenancy and argued that he withheld rent because some of the repairs were emergency repairs. The landlords denied having authorized the tenant to perform repairs or upgrades. The tenant did not provide a written account of the emergency repairs accompanied by receipts.

Analysis

Section 33 of the Act outlines which repairs may be considered emergency repairs. These include repair of major leaks, damaged pipes or plumbing, the primary heating system, damaged locks and electrical systems. The tenant claimed that some of the repairs were to electrical systems but did not provide any details of those repairs.

S. 33(5) provides that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant both claims reimbursement and provides a written account of the repairs accompanied by a receipt for each amount claimed. S. 33(7)

provides that if the tenant has made a claim for reimbursement, only then may the tenant deduct the amount from rent.

I find that the tenant has not followed the emergency repair procedure outlined under the Act, I am not satisfied that the repairs performed may be characterized as emergency repairs and I find that the tenant has failed to provide details of the repairs and receipts to the landlord. Because the tenant has failed to follow these procedures and has failed to persuade me that the repairs in question were indeed emergency repairs as defined under the Act, I find that the tenant was not entitled to withhold any amount from his rent.

I find it more likely than not that the rent payable for the rental unit was the \$1,608.00 claimed by the landlord and shown on the notice of rent increase. I find that the tenant failed to pay rent in the months of October – December inclusive and I find that the landlords are entitled to recover those arrears. I further find that the landlords are entitled to recover the \$50.00 filing fee paid to bring their application. I award the landlords \$4,874.00 and I grant them a monetary order under section 67 for that sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

I find that the landlords have established grounds to end this tenancy. I grant the landlords an order of possession effective on December 31, 2013. This order may be filed in the Supreme Court and enforced as an order of that Court.

As the tenancy is ending, it is unnecessary to address his claim for orders compelling the landlords to comply with the Act and perform repairs.

The tenant's claim is dismissed.

### Conclusion

The tenant's claim is dismissed with the exception of the monetary claim, which is dismissed with leave to reapply. The landlords' are awarded an order of possession and a monetary order for \$4,874.00.

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: December 24, 2013

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Residential Tenancy Branch

