



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, CNR, MNR, MNDC, OLC, ERP, RP, LRE, RR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for more time to dispute a notice to end tenancy than permitted by the *Residential Tenancy Act*; for an order cancelling a notice to end tenancy for cause; for an order cancelling a notice to end tenancy for unpaid rent or utilities; for a monetary order for the cost of emergency repairs; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order that the landlord make emergency repairs for health or safety reasons; for an order that the landlord make repairs to the unit, site or property; for an order suspending or setting conditions on the landlord's right to enter the rental unit; for an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of the application.

Both tenants attended the conference call hearing and gave affirmed testimony. However, despite being served with the Tenant's Application for Dispute Resolution, evidence and notice of hearing, no one for the landlord attended the call. One of the tenants testified that the landlord was served with the documents by Registered Mail on February 28, 2014 and provided a tracking number assigned by Canada Post, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and the only participants who joined the call were the tenants.

All evidence and testimony provided has been reviewed and is considered in this Decision.

During the course of the hearing the tenants withdraw the application for an order that the landlord make emergency repairs for health or safety reasons because the repair

has been made, and the application for an order cancelling a notice to end tenancy for cause which was applied for in error.

Issue(s) to be Decided

The issues that remain outstanding are:

- Should the tenants be permitted more time to dispute a notice to end tenancy than permitted by the *Residential Tenancy Act*?
- Have the tenants established that a notice to end tenancy for unpaid rent or utilities should be cancelled?
- Have the tenants established a monetary order as against the landlord for the cost of emergency repairs?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for extra hydro costs, repairs made for frozen pipes, etc., loss of space, and damages for failure to comply with an agreement?
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?
- Should the landlord be ordered to make repairs to the unit, site or property?
- Should the landlord be suspended or conditions set on the landlord's right to enter the rental unit?
- Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The first tenant testified that this month-to-month tenancy began on March 1, 2011 and the tenants still reside in the rental unit. Rent in the amount of \$850.000 per month is payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$425.00 which is still held in trust by the landlord. A copy of the 6-page tenancy agreement with a 1-page addendum has been provided.

The tenant further testified that the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on February 20, 2014 by posting it to the door of the rental unit. A copy of the notice has been provided for this hearing and it is dated February 20, 2014 and contains an expected date of vacancy of March 3rd 2014. The notice states that the tenants failed to pay rent in the amount of \$1700 that was due on "Jan & April, 2013." The tenant testified that there were some major repairs required as a result of a flood and the basement of the rental unit was not usable for 5 months, from

January to May, 2013. The flood happened in January, the tenants completed repairs for the landlord in January and again in April, 2013, and the landlord had agreed that the tenants would not have to pay rent for the months of January and April, 2013. The tenant states that the notice to end tenancy should be cancelled because the parties had a prior agreement to not pay rent for those months.

The tenant further testified that part of the agreement was for replacing the basement floors, cleaning and painting. The landlord paid for the hardwood and the tenants paid for the paint and did the work. There were also problems with the drainage on the outside of the rental unit, and both times, the landlord said not to worry about paying rent; they'd work it out for work completed by the tenants. However, the basement isn't yet completed. The tenants want the landlord to finish the floor in the basement or provide the tenants with flooring so they can complete the project.

The tenant further testified that the well water was contaminated, and the landlord had water holding tanks placed on the property. The tenancy agreement says water is not included in the rent, but the landlord had promised at the commencement of the tenancy that it would be fixed and water tested so that the tenants don't have to truck in water at the cost of \$107.00 every 17 days. The Addendum states, in part:

"2. TENANTS are in full knowledge and awareness of well-water contamination at RENTED LOCATION; and are in full knowledge and awareness that use and/or consumption of the well-water is discouraged and not recommended. Tampering with restrictive barriers to access well-water may be followed by criminal charges.

"3. TENANTS are in full knowledge and awareness of their personal responsibility to provide clean water for their use and consumption for themselves and the adjacent property. A concession of \$50 monthly to the per-month-rent is afforded the TENANTS as compensation; therefore, the per-month-rent is \$850, provided the above-mentioned condition of supplying water to the adjacent dwelling is met."

The other tenant testified that the landlord issued the notice to end tenancy because he was angry with the tenant for calling the police after the landlord had entered the rental unit without notice and without being invited in. He testified that on February 6 or 8, 2014 the tenant was in the bathroom when the landlord knocked and walked in. The landlord threatened to evict the tenant and became very volatile provoking a fight with the tenant when told he was not permitted to walk in. The tenant asks for an order that the landlord not enter the rental unit without being invited in or giving proper notice.

The tenant further testified that the water that the tenants supply also supplies another unit occupied by another tenant on the rental property. The tenants also pay for the hydro when the pumps are used by that other unit.

The tenants were able to use the basement again on May 1, 2013. The rental unit is approximately 2500 square feet on 3 floors, and the basement area is about 750 square feet; rough estimates only. The bedrooms for the tenants' children are in the basement. Further, the landlord had promised at the outset of the tenancy that the furnace would be replaced, which wasn't until recently. The tenant completed the application for dispute resolution and stated that the application for an order that the landlord comply with the *Act*, regulation or tenancy agreement referred to the landlord's promise to fix the water and well within the first 6 months.

The tenants claim \$8,265.00 as against the landlord and provided a document entitled "Accumulated Cost" to break down the amounts:

- 24 months with no water at \$214.00 per month, for which the tenants claim \$3,600.00;
- 5 months for no basement at \$425.00 per month, or \$2,125.00;
- 24 months of hydro for the other tenant's usage of the pump at \$20.00 per month, or \$480.00 as a rough estimate;
- Extra hydro costs for heat, heat tape and light for frozen pipes at a cost of \$100.00 per year, for a total of \$300.00; and
- \$1,760.00 for 99 hours of labour for repairs to the property and house at \$17.78 per hour.

The tenant testified that the \$1,760.00 has been paid by the landlord to the tenants by way of rental reduction, in that the tenants did not pay any rent for January or April, 2013.

The tenant also asks for an order that the well on the property be fixed and water tested. The tenants have provided a copy of the advertisement for the rental unit dated January 26, 2011 which states: "Tenants are responsible for the supply of their own water until the water system is renovated. More information upon viewing of the property." The landlord had promised that the water was to be fixed within the first 6 months of the tenancy and it still is not fixed 3 years later.

Analysis

Firstly, with respect to the tenants' application for more time to dispute a notice to end tenancy than permitted by the *Residential Tenancy Act*, I accept the undisputed testimony of the first tenant that the 10 Day Notice to End Tenancy for Unpaid Rent or

Utilities was found posted to the door of the rental unit on February 20, 2014. The notice is dated February 20, 2014. The *Act* states that documents served in that manner are deemed to have been served 3 days later. The tenants filed the Tenant's Application for Dispute Resolution on February 25, 2014. The *Act* requires a tenant to dispute such a notice within 5 days, which I find they have, and no extension of time to file the dispute is necessary. Therefore, the tenants' application for more time to dispute the notice to end tenancy is hereby dismissed.

With respect to the tenants' application for an order cancelling a notice to end tenancy for unpaid rent or utilities, I accept the undisputed testimony of the tenants that the parties agreed that no rent would be paid for the months of January or April, 2013. Where a tenant loses a facility or a service in a tenancy, a tenant is generally entitled to compensation. Further, I accept the testimony of the tenants that they completed some of the work required on the rental unit as a result of the flooding, and that 1 months' rent on 2 occasions for such incidents is not unreasonable. I also consider the fact that the notice to end tenancy is dated almost a year after the dates that the notice shows rent was due. I find that the parties agreed to no rent for those months and the notice to end tenancy for unpaid rent is hereby cancelled and the tenancy continues.

With respect to the tenants' claim for the cost of emergency repairs, the *Act* defines emergency repairs as repairs that are urgent and necessary for the health or safety of anyone or for the preservation or use of residential property, and made for specific repairs. A tenant may make such repairs in certain circumstances and must provide the landlord with a receipt and a request for reimbursement. In this case, I find that the tenants have not made any emergency repairs as defined by the *Act* that the landlord has not reimbursed the tenants for, and I have no receipts to substantiate any amount that the landlord would be liable to pay. Therefore the tenants' application for a monetary order for the cost of emergency repairs is hereby dismissed.

With respect to the tenants' claim for compensation in the amount of \$8,265.00, \$3,600.00 is for 24 months of no water. I find that the tenants have claimed for 24 of the 36 months that they have resided in the rental unit, and at \$214.00 per month the claim would be \$5,136.00. The tenants have reduced the claim to \$3,600.00, which divided by 24 months is \$150.00 per month. In the circumstances, I am satisfied that the loss exists, and exists as a result of the landlord's failure to comply with the agreement, however, in order to be successful with such a claim, the onus is on the tenants to prove the amount and what the tenants did to mitigate the damage or loss caused. The tenant testified that they pay \$107.00 to have water delivered every 17 days, but has provided no evidence of the cost or frequency. Further, I have no evidence before me that the tenants ever asked the landlord what his plans were, or if

they told the landlord they considered it to be a material term of the tenancy. The party alleging a breach must provide the proof, and I am not satisfied as to the amount or what the tenants did to mitigate. Therefore, the tenants' application for \$3,600.00 is hereby dismissed.

The tenant testified that \$2,125.00 of the claim is for 5 months of the unusable basement. The rough estimate provided is that the basement is about 750 square feet and is used by the children. Therefore I find that the area is a material portion of the rental unit. The rough estimate of the entire rental unit is 2500 square feet. In the absence of any evidence to the contrary, I accept that and find that the loss was about a third of the rental unit and I accept that the loss was for 5 months. Therefore, I find that the tenants have established a monetary claim as against the landlord for 5 times $\frac{1}{3}$ of the rent, or $(\$850/3 \times 5)$ \$1,416.00.

I further find that the \$300.00 claim for extra hydro costs for frozen pipes, heat tape, etc. has not been proven. No hydro bills have been provided nor receipts for heat tape or other supplies, and that portion of the tenants' application is hereby dismissed.

The testified that the 99 hours claimed in the document provided has already been paid by the tenants not paying rent for the months of January and April, 2013. I accept that testimony.

I have read the advertisement and the Addendum to the tenancy agreement. The rental unit was advertised for \$900.00 per month, and it appears that the tenants have received a reduction in rent in the amount of \$50.00 per month as compensation for supplying water to the adjacent dwelling, as stated in the Addendum. Therefore, I find that the tenants have already been compensated and the tenants' claim for \$480.00 for another tenant's hydro usage must be dismissed.

With respect to the tenants' application for an order that the landlord comply with the *Act*, regulation or tenancy agreement, I accept the undisputed testimony of the tenants that the well is still not operable, and that the tenancy agreement shows that water is not included in the rent. However, considering the advertisement which states: "Tenants are responsible for the supply of their own water until the water system is renovated," I find that the parties agreed that the landlord would have the well fixed and water tested for contamination. The advertisement does not indicate anything about it never being fixed, but says, "until." The tenants testified the landlord promised the repair within the first 6 months of the tenancy, and the tenants have been residing in the rental unit for 3 years. The landlord did not attend the hearing to dispute the application, and in the absence of any testimony or evidence to the contrary, I find that the well was agreed to by the parties within the first 6 months of the tenancy and the

landlord has failed to comply. I therefore order the landlord to comply with that agreement and make the necessary repairs or renovations to the well and pump, have the water tested, and have the water installed and operable within the rental unit by May 31, 2014. I further order the landlord to provide the tenants with a copy of the results of the water test(s).

Respecting the tenants' applications for an order that the landlord make repairs to the unit, site or property, I accept the undisputed testimony of the tenant that the floor in the basement has still not been finished. The *Act* requires a landlord to provide and maintain a rental unit in a manner that makes it suitable for occupation by a tenant. Further, I accept the testimony of the tenants that a flood during the tenancy caused the loss of the basement and I find that the landlord is responsible for its repairs. Considering that the tenants are now able to use the basement, and having found that the basement's worth is about one third of the rent, or \$283.00 per month, I find that \$100.00 per month is reasonable until the floors are completed. I order the landlord to complete the floor in the basement by April 30, 2014. If the landlord fails to have it completed by that date, the tenants will be permitted to deduct the sum of \$100.00 per month or part thereof from rent for future months, commencing with May 1, 2014, until the floor is finished.

I accept the undisputed testimony of the tenant that the landlord entered the rental unit without being invited by the tenant and without giving any written notice in advance. The *Act* does not permit such entry into a rental unit, and I find that the tenants have established that the landlord should be ordered to enter the rental unit only in accordance with the *Act*, and specifically if the tenants give permission at the time of entry or not more than 30 days before entry; or at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that gives the purpose for entering, which must be reasonable and the date and time of the entry which must be between 8 a.m. and 9 p.m. unless the tenants otherwise agree; or the landlord has an order of the director authorizing the entry; or an emergency exists and the entry is necessary to protect life or property. I order the landlord to provide to the tenants notice of entry at least 24 hours in advance in writing, and I order the landlord to refrain from entering the rental unit until after the notice takes effect. The written notice must indicate the date, time and reason for the entry which must be for protection of life or property or for an inspection no more than once per calendar month, unless the tenants otherwise agree in writing prior to the entry or invite the landlord to enter.

With respect to the tenants' application for a reduction in rent for repairs, services or facilities agreed upon but not provided, I accept the testimony that landlord promised that the well would be fixed within the first 6 months of the tenancy, and I find that a rent

reduction is justified if the landlord does not complete the repairs or renovations to the water system. However, I have heard no evidence or testimony about whether or not the water will be metered once operable, and considering that water is not included in the rent, I order that the tenants reduce rent by \$100.00 per month for each month or part thereof that the water is not usable by the tenants beyond May 31, 2014, commencing with June 1, 2014.

Since the tenants have been partially successful with the application, the tenants are also entitled to recovery of the \$100.00 filing fee for the cost of the application.

Conclusion

For the reasons set out above, the tenants' application for more time to dispute a notice to end tenancy than permitted by the *Residential Tenancy Act* is hereby dismissed; the tenants have filed within the time permitted.

The tenants' application for an order cancelling a notice to end tenancy for cause is hereby dismissed as withdrawn.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on February 20, 2014 is hereby cancelled, and the tenancy continues.

The tenants' application for a monetary order for the cost of emergency repairs is hereby dismissed.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,516.00. This amount may be deducted from future rent or otherwise recovered.

I hereby order the landlord to comply with the agreement and make the necessary repairs or renovations to the well and pump, have the water tested and operable within the rental unit by May 31, 2014.

The tenants' application for an order that the landlord make emergency repairs for health or safety reasons is hereby dismissed as withdrawn.

I order the landlord to complete the floor in the basement by April 30, 2014. If the landlord fails to have it completed by that date, the tenants will be permitted to deduct the sum of \$100.00 per month or part thereof from rent for future months, commencing with May 1, 2014, until the floor is finished.

I order the landlord to provide to the tenants notice of entry at least 24 hours in advance in writing, and I order the landlord to refrain from entering the rental unit until after the notice takes effect. The written notice must indicate the date, time and reason for the entry which must be for protection of life or property or for an inspection no more than once per calendar month, unless the tenants otherwise agree in writing prior to the entry or invite the landlord to enter.

I further order that if the landlord has not completed the necessary repairs or renovations to the well system as described above by May 31, 2014, the tenants will be permitted to reduce rent by an additional \$100.00 per month or part thereof commencing with June, 2014 until the water is tested and usable. I further order the landlord to provide the tenants with a copy of the results of the water test(s).

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: March 26, 2014

Residential Tenancy Branch

