



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, RP, RR

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for unpaid rent or utilities; for an order that the landlord make repairs to the unit, site or property; and for an order permitting the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

The parties both attended, and the landlord was accompanied by another person who identified himself as the owner of the rental unit. With the consent of the parties, the application has been amended to include that person as a respondent landlord. Both landlords and the tenant gave affirmed testimony and the tenant called one witness who gave affirmed testimony. The parties also provided evidentiary material in advance of the hearing and were given the opportunity to cross examine each other and the witness on the evidence and testimony, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

Has the landlord established that the notice to end tenancy was issued in accordance with the *Residential Tenancy Act*?

Has the tenant established that the landlord should be ordered to make repairs to the unit, site or property?

Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

### Background and Evidence

The first landlord testified that she is not sure when the tenancy began, however the tenant still resides in the rental unit. The tenancy is for a fixed period of time, and a tenancy agreement was signed by the tenant and the landlord company which owns the

building prior to the landlord becoming property manager. Rent in the amount of \$875.00 per month is payable in advance on the 1<sup>st</sup> day of each month. A copy of the written tenancy agreement has not been provided. At sometime during the tenancy, the landlord collected a security deposit from the tenant in the amount of \$437.50 which is still held in trust by the landlord and no pet damage deposit was collected.

The landlord also resides in the apartment complex, which consists of 52 rental units all owned by the same landlord company, and the tenant pays rent by a government Ministry directly to the landlord but the payments stopped coming. The tenant has had 4 roommates during the tenancy, but only this tenant is on the tenancy agreement. The tenant's roommate paid half of the rent for the month of August, 2014 leaving the other half outstanding and no rent has been paid for September. The tenant's roommate has moved out.

The landlord further testified that the tenant failed to pay rent when it was due and the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the door of the rental unit on September 6, 2014. A copy of the notice has been provided and it is addressed to the tenant, dated September 6, 2014 and contains an expected date of vacancy of September 20, 2014 for unpaid rent in the amount of \$1,312.50 that was due September 1, 2014.

The landlord also testified that the tenant has told her he has a staff infection from the carpets, which the landlord denies is possible. The landlord is not aware of the condition of the rental unit when the tenant moved in, and the tenant has asked for holes in the walls to be repaired, but the tenant never told the landlord that he was withholding rent for repairs until the notice to end tenancy was issued. The tenant also told the landlord that he put cash under the landlord's door, but no rent money was there. The landlord agreed to have the carpets cleaned if the tenant paid the rent. The tenant has knocked on the landlord's door and met the landlord multiple times only to tell the landlord that he didn't have the rent money, to the point of being harassing, and the landlord told him to leave her alone. The tenant has not offered or tried to pay the rent since the issuance of the notice.

The second landlord testified that the tenant moved into the rental unit on December 3 or 4, 2013 and believes that the security deposit was \$218.00. Another tenant was already resident in the rental unit and the tenant paid half a month rent along with the security deposit. He stated that the landlords did not separate the tenants by having each pay half the rent; all tenants were responsible for the payment of the full amount. He stated that the tenant paid \$437.50 for August rent, not the roommate who moved out, however the balance is outstanding and no rent has been received for September,

October or November, 2014. The amount outstanding is now \$3,087.50 including a \$25.00 late fee.

The landlord further testified that when the tenant moved into the rental unit he said it was okay but the parties didn't go through the normal rental application process. The tenant had other roommates in there and more damage has been done. The landlord and some of his staff have completed some repairs, but the landlord talked to the tenant about the whole rental unit being a mess. The landlord told the tenant to clean it up and the landlord would have the carpets cleaned in September, but the tenant never got back to the landlord. He testified that the holes in the walls were done by tenants, and the bedroom door is broken. The landlord agreed to cleaning the carpet only and not to any other repairs, services or facilities.

The landlord also testified that the tenant is not in good health and the issues he is currently having are not related to the rental unit or the carpet.

The tenant testified that the tenant he had moved in with originally had 2 other roommates; and the original tenant had told him he was angry and took it out on the apartment. The tenant moved into the rental unit in mid-November, 2013 and the landlord said he'd fix the walls within 2 days. The landlord took the material to the rental unit but didn't make the repairs.

The tenant further testified that he has a liver condition, and on September 1, 2014 he contacted the landlord who lives at the rental complex and the next day he put a cheque under her door. The tenant told the landlord he would cancel the cheque and the next day he took cash, but the landlord wouldn't answer the door. The tenant went back twice and the following month to pay the rent. On September 8, 2014 the other landlord arrived to collect rent and the parties agreed that in 2 days the carpet would be cleaned and then the tenant would pay rent. Rent is paid on the last Wednesday of every month and on October 22, 2014 the tenant knocked on the landlord's door with the rent for November, but the landlord wouldn't answer the door. The tenant could hear her, but she would not answer. The same happened on September 24, 2014.

The tenant denies that each tenant was responsible for rent in full, and testified that the landlord had a separate tenancy agreement with the roommate for half the rent and another tenancy agreement with the tenant for the other half, but the landlord never returned a copy to the tenant after it was signed.

The tenant also testified that the carpet needs to be cleaned or replaced, holes in walls need to be repaired, all closet doors are broken, the bathroom and bedroom doors are broken, cupboard doors are hanging off and the hinges won't hold a screw. The direct rent payments from the Ministry to the landlord were stopped because repairs weren't

done; the tenant told the disability worker that he was in the hospital 4 times because of conditions in the rental unit and they advised that they wouldn't send payments direct to the landlord anymore.

The tenant's witness testified that she met the tenant in November, 2013 and was previously a roommate. The parties are now friends and the witness resides in another unit within the same complex, having been there now for about a year.

The witness also testified that she present when the landlord and tenant inspected the rental unit with the landlord's maintenance person. The landlord told the tenant that if the tenant paid the security deposit he would send someone over to fix the damages, but no repairs have been completed. The carpet was nasty when the tenant moved in, and the roommate put up the blinds.

The witness also testified that her apartment is horrendous and repairs are not getting done by the landlord.

### Analysis

The *Residential Tenancy Act* states that a tenant must pay the rent even if the landlord has failed to comply with the *Act*. In this case, the landlord testified that work would be completed when rent was paid and the tenant testified that he told the landlord he would pay the rent when the work gets done. Whether or not the work got done, the tenant was obligated to pay rent. I do not accept that the landlord refused rent money from the tenant, and I find that the tenant failed to pay rent for August, September and October, 2014 and the landlord had cause to issue the notice to end tenancy. The tenant did not pay the rent within 5 days of service as required by the *Act*, and therefore I find that the tenant is conclusively presumed to have accepted the end of the tenancy. The tenant's application for an order cancelling the notice to end tenancy is hereby dismissed.

Since the tenancy is ending, the tenant's application for an order that the landlord make repairs to the unit, site or property is also dismissed.

With respect to the tenant's application to reduce rent for repairs, services or facilities agreed upon but not provided, the landlord has not provided a copy of the move-in condition inspection report but testified that at move-in the tenant said it was "Okay." The landlord also testified that the damage in the rental unit was caused by tenants. The tenant does not entirely deny that but stated that a previous roommate took out his anger on the apartment, and the landlord promised to have repairs done within 2 days of the commencement of the tenancy. He also said the landlord took materials to the rental unit to complete the repairs to the walls but never made the repairs. The landlord

has not disputed that testimony, but testified that some repairs have been done during the course of the tenancy.

The extent and amount of time the repairs went untouched by landlord are crucial to any monetary finding, as well as what efforts the tenant made to mitigate the conditions he was living in. The tenant and the tenant's witness, another tenant of the same landlord, testified that their respective rental units are in poor shape and both testified that no repairs get completed by the landlord. A landlord is required to provide and maintain rental premises in a state of decoration and repair that makes it suitable for occupation by a tenant. I cannot be satisfied how much damage has been caused in the rental unit since the first roommate moved out, but I am satisfied that the landlords promised to fix the holes in the walls and clean the carpets and have failed to do so. I hereby order that the landlord reduce any rental arrears by \$450.00.

### Conclusion

For the reasons set out above, the tenant's application for an order cancelling a notice to end tenancy for cause is hereby dismissed.

The tenant's application for an order that the landlord make repairs to the unit, site or property is hereby dismissed.

I hereby order the landlord to reduce any rental arrears by \$450.00.

This order is final and binding and may be enforced.

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 10, 2014

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Residential Tenancy Branch