



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, CNR, MNR, MND, MNSD, MNDC, ERP, RR, FF

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent, for the cost to repair the yard, for a violation ticket issued by the local city by law office and the filing fee. The landlord also applied to retain the security deposit in satisfaction of her monetary claim.

The tenant applied for an order to cancel the notice to end tenancy and for an order directing the landlord to carry out emergency repairs and reduce rent. The tenant also applied for a monetary order for the cost of potable water and for compensation for health issues related to the tainted water supply. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to an order of possession and a monetary order for unpaid rent for the cost to repair the yard, for a violation ticket issued by the local city by law office and the filing fee? Is the tenant entitled to the remedies that she has applied for?

Background and Evidence

The tenancy started on October 15, 2013. The monthly rent is \$1,000.00 payable on the first of each month. The tenant is required to pay \$50.00 towards utilities. Prior to moving in the tenant paid a security deposit of \$500.00. The water supply to the rental unit comes from a well on the property. The upper floor is rented out separately.

The tenant testified that sometime towards the end of January 2015, a neighbour informed her that the well water was unsafe for drinking. The tenant sent a text message to the landlord regarding this issue. The tenant also informed the local Health Authority on February 05, 2015. A health inspector visited the rental unit on February 11, 2015 and took samples of the water supply.

The test results and a letter dated February 24, 2015 were sent to the landlord by the health inspector. The letter indicated that the water supply did not meet the guidelines for drinking water quality for three tested parameters – arsenic, pH and Sodium. The letter stated that based on these test results, it was determined that the water supply was not safe for consumption by the tenant.

The landlord was instructed to provide the tenant with potable water until the problem was taken care of and was also ordered to take certain measures to ensure the safety of the water supply. The landlord testified that she received the letter on March 02, 2015 and started taking action immediately. Upon taking the required steps to rectify the situation, the water was deemed safe to drink effective April 09, 2015.

The landlord pointed out that she had had the water tested in 2009 after installing a new filtration system. She was required to test the system every five years, replace the UV light every year and replace filters every six months. The landlord stated that she had changed the filter in July 2014 and the UV light in February 2014.

The landlord further testified that on March 01, 2015, she had ordered new filtration systems for both the upper and lower levels of the rental property and had them installed on March 12, 2015. The landlord stated that the systems would have been installed earlier if it was convenient for the tenants

The landlord testified that the tenant failed to pay rent on March 01, 2015 and on March 03, 2015; the landlord served the tenant with a notice to end tenancy for nonpayment of \$1,000.00 in rent plus \$50.00 for utilities. The tenant disputed the notice in a timely manner. The tenant agreed that as of the date of this hearing, she owed the landlord a total of \$2,100.00 in unpaid rent and utilities.

The landlord stated that the tenant has caused damage to the yard and is claiming \$500.00 toward the cost of repairs. The landlord is also claiming \$200.00 which was levied as a fine on the occupants of the rental unit, for lighting a fire.

The upstairs occupant blamed the tenant for lighting the fire and vice versa. Both occupants refused to take responsibility for the violation. The landlord has not yet paid the fine.

The landlord is making the following claim:

1.	Rent/Utilities for March and April 2015	\$2,100.00
2.	Violation ticket	\$200.00
3.	Damage to lawn	\$500.00
4.	Filing fee	\$50.00
	Total	\$2,850.00

The tenant stated that since she moved into the rental unit, she and her children fell sick on a regular basis. Shortly after moving in, she purchased a water cooler and the entire family drank filtered water that was purchased from the store. The tenant testified that despite drinking store bought water, the family continued to be unwell.

The tenant stated that after she received the results of the test sample of water taken from the well located on the rental property, she visited her doctor and had the whole family tested for arsenic. The tenant filed a copy of the medical report and the result indicates that the amount of arsenic in the tenant's system is significantly lower than the normal range.

The tenant is claiming compensation in the amount of \$1,050.00 for the inconvenience and suffering due to the tainted water.

The tenant stated that since she found out that the water was not safe for drinking, she started purchasing extra drinking water. The tenant stated that she usually purchased 2.5 jugs per week for drinking, but since February 2015, when she found out about the arsenic in the water supply, she started purchasing 4 jugs a week. The extra water was for the purpose of cooking and washing.

The tenant is claiming a total of \$ 1,543.19 for all the water purchased from the start of tenancy. This amount also includes the cost of the water cooler in the amount of \$270.00. The tenant did not provide any receipts as proof of purchase. The tenant stated that the cost of water was \$5.99 per jug and filed a photograph of the price sticker as displayed in the store.

Analysis

Landlord's application

The tenant received the notice to end tenancy for unpaid rent, on March 03, 2015 and did not pay rent within five days of receiving the notice to end tenancy, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the notice. Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. The order may be filed in the Supreme Court for enforcement.

I also find that the landlord is entitled to \$2,100 for unpaid rent and utilities, as agreed to by the tenant.

The landlord has not paid the violation ticket and therefore still has the opportunity to dispute it. Accordingly, I dismiss this portion of the landlord's claim with leave to reapply.

The tenancy has not ended and therefore the landlord's claim for the cost of repairing damage to the lawn is premature and can be dealt with at the end of tenancy. I also dismiss this portion of the landlord's application with leave to reapply.

The landlord may also deal with the return or retention of the security deposit in accordance with s.38, at the end of tenancy.

The landlord has proven her case and therefore I award the landlord \$50.00 towards the recovery of the filing fee.

Tenant's application

The tenant stated that she has always purchased jugs of water but increased the quantity of her purchase after she found out about the safety of the water supply. The tenant testified that purchased 1.5 jugs per week over and above her regular needs. Even though the tenant did not provide any proof of purchase, I find that the tenant did incur additional costs as a result of the tainted water supply.

I find that the tenant is entitled to the cost of the additional water purchased by her. The tenant is not entitled to the cost of water that she purchased regularly.

Based on the testimony of both parties, I find that the tenant purchased additional water after she was notified of the test results on February 24, 2015. The water was been deemed safe for consumption on April 09, 2015. Accordingly, I find that the tenant purchased additional jugs of water for approximately seven weeks. Based on cost of \$5.99 per jug, I award the tenant \$65.00 towards the additional cost of water.

The tenant has not proven that her medical condition and that of her family was impacted by the presence of arsenic in the water supply. The results of the medical tests indicate that the tenant had levels of arsenic that were significantly lower than the normal range. Therefore the tenant's application for compensation for pain and suffering is dismissed.

Overall the landlord has established a claim of \$2,150.00 and the tenant has established a claim of \$65.00. I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$2,085.00 which consists of the difference in the established entitlements of both parties. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective **two days after service** on the tenant. I also grant the landlord a monetary order in the amount of **\$2,085.00**

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: April 10, 2015

Residential Tenancy Branch

