



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, FF

Introduction

This hearing dealt with an application by the tenants for an order setting aside a 10 Day Notice to End Tenancy for Non-Payment of Rent and a monetary order. Although served personally with the Application for Dispute Resolution and Notice of Hearing the landlord did not appear.

Issue(s) to be Decided

- Is the 10 Day Notice to End Tenancy for Non-Payment of Rent dated March 2, 2015 valid?
- Are the tenants entitled to a monetary order and, if so, in what amount?

Background and Evidence

This month-to-month tenancy started in the spring of 2. The monthly rent is \$1000.00. At first the rent was due on the first day of the month. Later the parties agreed that the rent would be paid in two installments of \$500.00; one on the first day of the month and the second on the fifteenth.

The male tenant, who did not appear, is an old friend of the landlord. He and the female tenant have been partners for thirteen years. The male tenant is a partner in a large lumber yard and is a qualified tradesman.

The rental unit is a small house. Although the landlord had owned it for some time he had not kept up the maintenance and it was in very poor condition. The landlord and the tenants agreed they would rent the house and make certain renovations, as requested by the landlord. The payment arrangement appears to have been discussed and agreed upon primarily between the male tenant and the landlord. Whatever the actual terms of the agreement were they were not reduced to writing nor was the female tenant able to articulate them. Although asked many times about the terms of the agreement the female tenant just kept saying that the landlord asked them to do certain

work, they told him it would cost \$40,000.00 to \$50,000.00 to them, and the landlord said he was going to get a mortgage to pay for the renovations.

The landlord paid the male tenant \$10,000.00 to start the project. According to the female tenant this money was applied to materials. For the first six months the tenants lived in a fifth wheel trailer parked in the driveway while they worked to bring the home to a livable condition. They did not pay any rent during this period.

The materials have come from the male tenant's lumber yard and the tradesman through the tenants' contacts. In addition, the tenants' family members have also helped with the renovation.

It is clear from the photographs filed by the female tenant and her written and oral testimony that the tenants have done a very substantial amount of work in the house and in the yard.

The female tenant testified that she thought the male tenant had prepared a breakdown of the labour and materials put into the rental unit and had presented it in writing to the landlord. After a certain point, the male tenant kept his conversations with the landlord separate from her.

The male tenant has been working another community for the past two years and is only home occasionally so the responsibility of the house and yard maintenance has fallen primarily on the female tenant.

The female tenant says she is now separating her labour from that of the male tenant. She testified that they paid rent throughout the tenancy and she never received any compensation for her labour. In another part of her testimony she said that on one occasion she asked the landlord reimbursement for staining work in the amount of \$3000.00. The landlord gave her \$1000.00 in cash and the next two months rent free.

The tenant testified that the only record she has of her labour is the photographs. She asked the landlord for payment for her labour in a Christmas card and in two other letters. Then she presented the landlord with an invoice for a flat \$10,000.00. The landlord presented her with a 10 Day Notice to End Tenancy for Non-Payment of rent dated March 2, 2015, claiming arrears of rent in the amount of \$3800.00.

The tenant did not file copies of the accounting or invoices or any other records the male tenant had prepared and presented to the landlord, or copies of her letters and invoices to the landlord.

Analysis

On an application by a tenant to set aside a notice to end tenancy the onus of proof is on the landlord to establish the validity of the notice. As the landlord did not appear at the hearing or file any written evidence in advance of the hearing, he did not meet his onus of proof. The 10 Day Notice to End Tenancy for Non-Payment of rent dated March 2, 2015, is set aside and is of no force or effect. The tenancy continues until ended in accordance with the *Residential Tenancy Act*.

With regard to the tenants' application for a monetary order in the amount of \$10,000.00 the onus of proof is on the applicant prove her claim on a balance of probabilities. When a person is claiming compensation for work done they must show, with some specificity, that:

- The other person asked that the work be done and agreed to pay for it.
- The price that was agreed upon for the work; either a lump sum or an hourly rate.
- If the agreement was not a lump sum contract the hours worked and the hourly rate charged.

The female tenant's evidence does not meet this criterion. Overall, her evidence was scattered and occasionally contradictory.

The original renovation contract appears to be part of the tenancy agreement. Both tenants are parties to the same tenancy agreement. If the agreement was for a lump sum the female tenant's labour is part of that contract and cannot be separated from it.

If the agreement was to pay an hourly rate there is no evidence about the actual number of hours worked by the female tenant. There is evidence that she, the male tenant, other family members and friends, and tradesmen, did a lot of work to this unit but no evidence on which I can separate out the female tenant's labour from everything that was done. This is the same evidentiary issue that prevents me from making an order for compensation to the female tenant on any principle of unjust enrichment.

As a result of inadequate evidence the female tenant's claim for compensation for work she did on renovations to the rental unit is dismissed. The male tenant may still pursue any claim he may have based on his agreement with the landlord if he chooses to do so.

In her testimony the female tenant referred to several incidents involving water leaks. The tenants may have a claim for losses suffered as a result of those incidents, including loss of quiet enjoyment, but those are a separate issue. No decision is made

on those claims, if any. If the tenants want to pursue those possible claims they must file and serve a new application for dispute resolution.

As the tenants were only partially successful on their application I find they are entitled to reimbursement from the landlord of the \$50.00 fee they paid to file. Pursuant to section 72(2) the sum of \$50.00 may be deducted from the next rent payment due to the landlord.

Conclusion

- a. The 10 Day Notice to End Tenancy for Non-Payment of rent dated March 2, 2015, is set aside and is of no force or effect. The tenancy continues until ended in accordance with the *Residential Tenancy Act*.
- b. The female tenant's claim for a monetary order is dismissed.
- c. An order granting the tenants reimbursement from the landlord of the fee they paid to file their application has been granted. Pursuant to section 72(2) the sum of \$50.00 may be deducted from the next rent payment due to the landlord.

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: May 05, 2015

Residential Tenancy Branch

