



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

CNR, ERP

### Introduction

This hearing was convened by way of conference call in response to the tenants' application for an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent and for an Order for the landlord to make emergency repairs for health or safety reasons.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served in person to the landlord on February 22, 2016.

Three of the tenants named on this application appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Are the tenants entitled to an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent?
- Are the tenants entitled to an Order for the landlord to make emergency repairs?

### Background and Evidence

The tenants testified that this month to month tenancy started on July 01, 2015. The landlord refused to provide a tenancy agreement. Rent for this unit which includes two suites is \$1,500.00 per month due on the 1<sup>st</sup> of each month. Both suites are rented together as one unit.

The tenants testified that the landlord served them with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on February 11, 2016 by posting it to their door. This Notice stated that they owed rent for January and February of \$3,000.00. The tenants testified that they had paid rent for January, 2016; half of which was paid on January 01, 2016 and half was paid on January 15, 2016. The landlord refused to give the tenants any rent receipts.

The tenants testified that they withheld their rent for February and March as the landlord has failed to do emergency repairs in the unit. There has been water leaking into the basement area, the electrical panel was sparking, black mould was discovered to the downstairs kitchen which has caused considerable damage to the kitchen counters, cupboards, drywall and flooring and dead trees had to be removed from the property.

The tenants testified that they contacted the City and the Fire Department. An inspector from the City and the Fire Department came to look at the house and said that the basement suite was illegal. The City inspector wrote to the landlord on February 29, 2016 and ordered the landlord to do repairs to the unit. The electrical system required a review, a safety review for the gas forced air system, the smoke alarm need to be hard wired and interconnected, the basement cooking appliances need to be removed, the wood burning appliance needs to be decommissioned until a full review is conducted by a certified energy technical technician. This letter from the City also notes that the above items are only the immediate safety concerns and that many other issues are required to be corrected. The letter informed the landlord that failure to comply with the above noted issues by March 11, 2016 may result in a non-occupancy order being issued for the basement suite.

The tenants testified that they have attempted to contact the landlord and his property manager but they will not respond to the tenants and none of the required work has been completed. The landlord did send an electrician in to the unit to do some work on the electrical box. The tenants referred verbally to a text message sent from the City inspector who stated that the house should be condemned.

The tenants testified that after they found water from dripping pipes in the basement they found the damage this had caused was considerable in the kitchen and the pipes must have been dripping for some time. The tenants also found black mould. They contacted the property

manager and notified them of the issues. The tenants waited three weeks for the property manager to come to the unit but when they failed to attend the tenants did the required work themselves. The tenants removed kitchen counters and cupboards and replaced some drywall and flooring to remove the black mould.

The tenants testified that they also had to take down a number of dead trees on the property which were rotten and in danger of falling. These trees could have caused harm to person or property and nearby power lines had the tenants not removed them and they were so bad the tenant was able to just push them over. The tenants testified that they have another hearing scheduled for April 12, 2011 concerning repairs and compensation.

The tenants testified that they seek an Order for the landlord to make emergency repairs as specified in the letter from the City. In addition to those repairs the tenants also request that the landlord is ordered to look at the plumbing system and any further black mould in the property as soon as possible.

### Analysis

The landlord did not appear at the hearing to dispute the tenants' claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenants' evidence before me.

With regard to the tenants' application to cancel the Notice, the tenants agreed they had withheld rent for repairs made to the property and to remove trees from the property which were dead. The tenants have insufficient evidence to show that the repairs fall under the grounds of emergency repairs. I refer the parties to s.26 of the *Act* which states:

*26. A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

While I accept that there is sufficient evidence to show the unit is in need of repairs and some of these would fall under the category of emergency repairs I am not satisfied that the tenants

have a right under the *Act* to deduct rent for these repairs. Consequently, I am unable to set the Notice aside.

With regard to the tenants' application for an Order for the landlord to make emergency repairs for health or safety reasons; I am satisfied from the evidence before me that the landlord has failed to comply with s. 32 of the *Act*. This section states:

**32** (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

*(a) complies with the health, safety and housing standards required by law, and*

*(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

The tenants have sufficient evidence to show that the landlord has failed to make repairs, failed to make emergency repairs and failed to comply with an Order from the City to make the most important emergency repairs by March 11, 2016.

Consequently, I order the landlord to make the following emergency investigations and any necessary repairs:

- To investigate and make any necessary repairs to the electrical; system by a certified electrician;
- To investigate and make any necessary repairs by a certified gas fitter to the gas forced air system;
- To install hard wired and interconnected fire alarms;
- To decommission the wood burning appliance until a full review is conducted by a certified wood energy technician;
- To investigate and remedy any black mould issues found in the property;
- To investigate and make any necessary repairs to the plumbing system, using a certified plumber.

I Order the landlord to start this work by March 31, 2016, failure to comply may result in the further action involving compensation and a rent reduction being sought by the tenants at the hearing held on April 12, 2016.

Conclusion

The tenants' application to cancel the Notice is dismissed. The Notice remains in force and effect.

I Order the landlord to comply with the s. 32 (1) of the *Act* and Order the landlord to investigate and make all necessary repairs to the rental unit, as detailed above, starting no later than March 31, 2016

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 23, 2016

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Residential Tenancy Branch