



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REALTY EXECUTIVES ECOWORLD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDC, O, RR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities for monetary order for money owed or compensation under the Act, to allow a tenant to reduce rent for loss of services, agreed upon but not provided, and to recover the filing fee from the landlord.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Preliminary matter

At the outset of the hearing the parties agreed that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities should be cancelled as the rent was paid within 5 days. Therefore, I find it appropriate to cancel the notice to end tenancy.

Issues to be Decided

Are the tenants entitled to a monetary order for money owed or compensation under the Act?

Are the tenant entitled to a reduce rent?

Background and Evidence

The tenancy began September 15, 2015. Rent in the amount of \$2,000.00 was payable each month.

The tenants claim as follows:

a.	No hydro for 28 days \$1,806.45 - \$800.00 credit received	\$1,000.00
b.	Generator	\$ 425.59
c.	Fuel for generator	\$ 560.00
d.	Food	\$ 700.00
e.	Damage to microwave, Keurig, and TV (estimates)	\$ 544.25
f.	Filing fee	\$ 100.00
	Total claimed	\$3,329.84

The tenants testified that on March 21, 2016, their rental unit smelled of smoke and they contacted the fire department. The tenants stated that the fire department attended and determined it was an electrical issue.

The tenants testified that the landlord was notified who attended the rental unit on March 21, 2016, with an electrician and determined it was a problem with the electrical panel. The tenant stated that they were told by hydro that it was from a frayed line due to a recent windstorm.

The tenants testified on April 10, 2016, the hydro attended and were unable to reconnect the power due to a broken seal on the electrical box.

The tenants testified that they were without power from March 21, 2016 to April 15, 2016. The tenants stated that the landlord gave them a rent reduction of \$800.00; however, they believe they should not have to pay any rent for the 28 days. The tenants seek further compensation in the amount of \$1,000.00.

The tenants testified that since they had no power they purchased a generator which was used the entire time to keep their food from spoiling. The tenants seek to recover the cost of the generator in amount of \$425.59.

The tenants testified that they should be allowed to recover the cost of fuel and supplies for the generator in the totaled amount of \$560.00.

The tenants testified that as a result of no power they could not use the stove or microwave and had to have meals out. The tenants stated that there were 11 people residing in the residence at the time. The tenants seek to recover for food in the amount of \$700.00.

The tenants testified that when the landlord turned the power back on, the power surged causing damage to the coffee maker, microwave and TV. The tenants seek compensation for the damage items in the amount of \$544.25.

The tenants testified that they also are seek a rent reduction in the amount of \$400.00 per month, because the stove in the basement had to be removed as it was not authorized by the municipally.

The tenants testified that the landlord's agent also forced the male tenant to sign written tenancy agreement. The tenants stated the landlord refused to add the female tenant on the tenancy agreement, although they have always been a tenant. The tenants stated when they received a copy the landlord had altered it by adding "stove only upstairs, not in basement".

Filed in support of the tenants application is a bank statement, which the tenants have marked for purchase of the generator, gas oil and food. A copy a tenancy agreement dated June 1, 2016.

The landlord's agent testified that they were called as there was no power in the rental unit. The landlord stated they attended the premises with an electrician. The agent stated that the electrician determined that the tenants were overloading the circuits. The agent stated that the tenants are not authorized to have 11 people living in the rental premises. Filed in evidence is a copy of a letter from the electrician.

The landlord's agent testified that the tenants had lights the entire time. The agent stated as a result of the tenants overloading the circuits it was decided to upgrade the panel; however, it was necessary to apply for an electrical permit, and it was only when the panel was changed that they did not have power.

The landlord's agent testified that parties had already agreed to one-time rent reduction of \$800.00 to compensate the tenant for the inconvenience, although they do not believe any compensation was required as the upgrade was for their benefit. Filed in evidence is a text message.

The landlord's agent testified that the tenants have never informed them of any damages caused to the microwave, TV, or coffee maker prior to the hearing and they have not had the opportunity to inspect.

The landlord's agent testified that the male tenant was not forced to sign a new tenancy agreement. The agent testified that there was no written tenancy agreement, and they were a new agent and wanted it to be in writing. The agent stated the new agreement removed the stove from the basement as the removal was required to comply the municipality bylaw. The agent stated they are agreeable to have the female tenant added as a co-tenant.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenants have the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, the tenants received compensation in the amount of \$800.00 for the rental unit having electrical issues for 28 day, the lights were working during this time; however, the tenants do not want to pay any rent for this time. I find that unreasonable as the rental unit was still livable and the tenants had 11 people living there, which may be an unreasonable amount of occupants. I find the tenants have been adequately compensated. Therefore, I dismiss this portion of their claim.

I also find the tenants not credible on the issue of the generator, gas, and oil purchased. The tenants claimed the generator was purchased and used for the entire 28 days; however, their bank statement does not support their testimony. No receipts were provided to show what items were purchased.

The bank statement shows the tenants purchased product from gas stations, which were said to be gas for the generator on the following dates: March 22, 2016, \$4.01; March 22, 2016, \$13.02; March 23, 2016, \$15.00; March 28, 2016, \$20.00; and March 29, 2016, \$20.00.

However, the bank statements shows the tenants purchased an item on April 7, 2016, which they testified was the generator, which does not support their testimony that it was purchased at the start of the electrical issue and use for the entire time. Further, it would not be reasonable for the tenants to be purchasing gas on the above-mentioned dates for an item not yet purchased. Therefore, I dismiss the tenants claim to recover the cost of the generator, gas and supplies. The tenants are cautioned that providing false testimony or attempting to mislead evidence in a legal hearing may have serious consequences.

I also dismiss the tenants claim for food. The tenants provided no receipt for food they said they had to purchase for me to review and consider. A bank statement is not sufficient. Further, the landlord is not responsible for the 11 people that were residing in the rental premises as occupants; occupants have no legal rights under the Act.

I am also satisfied that the male tenant entered into tenancy at their own accord and it is not unreasonable when a new property manager takes over that they want to comply with the Act, by having the tenancy agreement in writing as required by the Act.

I also accept the landlord's version over the tenants that the terms of the tenancy agreement dated June 1, 2016, was mutually agreed upon, by removing the basement stove. As this is supported by the tenants' evidence as they provided a copy of the inspection report dated April 22, 2016, from the building division which indicated all unauthorized electrical in suite are to be removed, which was the stove in the basement.

I also find it would not be reasonable for the tenants to say they were under duress to sign the written tenancy agreement if the terms were the same original terms, which was said to include the basement stove. Therefore, I find the tenancy agreement entered into on June 1, 2016, is binding on the parties, which there is no stove in the basement. Therefore, I find the tenants are not entitled to a rent reduction,

As the female tenant insisted during the hearing that their name is added to the tenancy agreement and the landlord's agent did not object. I find it appropriate to amend the tenancy agreement to include the female tenant listed in the application.

The tenants' application is dismissed.

Conclusion

The tenants' application is dismissed.

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: August 08, 2016

Residential Tenancy Branch