



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **Landlord:** OPR MNRL-S FFL
 Tenant: CNR, DRI, ERP, MNRT

Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlord sought:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants sought:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33; and
- an order regarding a disputed additional rent increase pursuant to section 43

The landlord and the tenants attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. Tenant P.J. (the tenant) indicated that he would be the primary speaker for the tenants.

The tenant acknowledged that they received a copy of the Landlord's Application for Dispute Resolution (Landlord's Application) which was personally handed to them on December 07, 2017, while the landlord acknowledged receiving the Tenants' Application for Dispute Resolution (Tenants' Application) which was personally handed

to him on November 08, 2017. Pursuant to section 89 of the *Act*, both parties are found to have been duly served the applications.

The landlord testified that he provided his evidence to the tenants with the Landlord's Application. The tenant confirmed that they received the landlord's evidence. In accordance with section 88 of the *Act* I find the tenants were duly served with the landlord's evidence.

The tenant confirmed that they did not submit any documentary evidence in support of their own application.

The landlord testified that he personally served the 10 Day Notice to the tenants on November 03, 2017. The tenant confirmed receipt of the 10 Day Notice. In accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice.

The landlord submitted an Amendment for an Application for Dispute Resolution (the Amendment) to increase their monetary claim for rent owing that has increased since the 10 Day Notice was issued. The landlord admitted that he did not serve the Amendment to the tenants.

Rule 4.6 of the Residential Tenancy Branch Rules of Procedure establishes that the Amendment must be served to the other party not less than 14 days before the hearing. As the landlord did not serve the tenants with the Amendment, I find I cannot consider the Amendment as it would prejudice the tenants as they did not have a chance to respond.

The landlord testified that the tenants are still in the rental unit and have not made any payments toward the tenancy since the 10 Day Notice was issued. At the outset of the hearing the landlord sought to increase their monetary claim from \$850.00 to \$2,250.00 to reflect the tenants' failure to pay \$750.00 in monthly rent for November 2017, December 2017 and January 2018, the additional months of unpaid rent waiting for this hearing.

Residential Tenancy Rule of Procedure 4.2 states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. I allow the amendment as this was clearly rent that the tenants

would have known about and resulted since the landlord submitted their Application for Dispute Resolution.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Are the tenants entitled to an order regarding a disputed additional rent increase?

Are the tenants entitled to a monetary award for the cost of emergency repairs to the rental unit?

Are the tenants entitled to an order for the landlord to make emergency repairs to the rental unit?

Background and Evidence

The landlord testified that this tenancy began on May 1, 2012, with a monthly rent of \$750.00 due on the first day of the month. The landlord testified that he continues to retain a security deposit in the amount of \$325.00.

A copy of the 10 Day Notice, dated November 03, 2017, with an effective date of November 13, 2017, for \$850.00 in unpaid rent was included in the landlord's evidence.

The landlord testified that the tenants have not paid the monthly rent for November 2017, December 2017 and January 2018.

The tenant admitted that they have had financial hardship and have had to pay other bills, which has impeded the tenants' ability to pay the rent. The tenant testified that the tenants tried to pay \$600.00 of the amount owing on the 10 Day Notice to the landlord

but that the landlord refused to accept the payment. The tenant admitted that they have not tried to pay any rent to the landlord since this one occasion.

The tenant submitted in their Details of the Dispute on the Tenants' Application that they replaced their refrigerator and that it works better than the refrigerator that came with the rental unit. The tenants are seeking reimbursement for the cost of the refrigerator in the amount of \$200.00. The tenant also submitted that the landlord verbally informed them of an additional rent increase in their monthly rent from \$750.00.

The landlord admitted that he verbally asked for additional rent but stated that he informed the tenants that he withdrew that request and is only seeking \$750.00 for each month of unpaid rent. The landlord stated that the tenant only tried to pay \$250.00 and that the landlord advised them to wait until the tenants had the full amount of \$750.00 for the monthly rent available to pay to the landlord.

Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Section 33 of the *Act* allows for a tenant to complete an emergency repair when the landlord has not completed the emergency repair in a reasonable amount of time and for the tenant to be reimbursed for those repairs by deducting the amount from rent.

Section 33(1) of the *Act* defines emergency repairs as made when the repair is urgent, necessary for the safety of anyone or for the preservation of use of residential property, for the purpose of repairing major leaks in pipes or roof, damaged or blocked water or sewer pipes or plumbing repairs, primary heating system, damaged or defective locks that give access to a rental unit, electrical systems or in prescribed circumstances, a rental unit or residential property.

Section 33(3) of the *Act* requires the tenant to make two attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs and allowing the landlord reasonable time to complete the repairs before the tenants are able to complete the repairs themselves. I find that the replacement of the refrigerator does meet the definition of an emergency repair as defined by section 33 (1) of the *Act*. I further find that the tenants have provided no evidence to demonstrate that any emergency repairs are required at the rental unit or

that the need for any emergency repairs completed meet the definition of emergency repairs under section 33 of the *Act*, which would allow the tenants to deduct any amount from their rent for reimbursement. For the above reasons, I dismiss the tenants' Application to have emergency repairs completed and for a monetary award for emergency repairs completed.

Section 41 of the *Act* states that a landlord must not increase rent except in accordance with sections 42 and 43 of the *Act*, which only allow for a rent increase served in the approved form at least 3 months before the effective date of the increase, by an amount calculated in accordance with the regulations.

I find that there is no evidence provided that a written notice for an additional rent increase was given to the tenants. I accept the landlord's testimony that he withdrew his verbal request to increase the rent and is only seeking the agreed upon monthly rent of \$750.00. For these reasons I dismiss the tenants' Application to dispute an additional rent increase as no notice of an additional rent increase has been given to the tenants and the monthly rent remains at \$750.00.

I find that the tenants admitted that they have not paid any rent to the landlord since their first attempt to make a partial payment towards the rent owing on the 10 Day Notice. As I have found that the tenants had no authority under section 33 of the *Act* to withhold any rent, I dismiss the tenant's application to cancel the landlord's 10 Day Notice.

For the above reasons I dismiss the Tenants' Application in its entirety, without leave to reapply.

Section 55(1) of the *Act* reads as follows:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord's notice to end tenancy complies with section 52{form and content of notice to end tenancy}, and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

Section 52 of the *Act* provides the following requirements regarding the form and content of notices to end tenancy:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) **be signed** and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,...and*
- (e) when given by a landlord, be in the approved form...*

I find the 10 Day Notice is not signed by the landlord. For this reason I find the 10 Day Notice does not comply with the provisions of section 52(a) of the *Act* and is not a valid notice to end tenancy.

Therefore I order that the 10 Day Notice, dated November 03, 2017, is cancelled and of no force or effect. This tenancy will continue until ended in accordance with the *Act*.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. As the tenants have admitted that they have not paid the any rent to the landlord, I find that the landlord is entitled to a monetary award in the amount of \$2,250.00 ($\$750.00 \times 3 = \$2,250.00$) for unpaid rent owing for November 2017, December 2017 and January 2018.

As the landlord has been partially successful in their Landlord's Application, I allow him to recover half of the filing fee from the tenants.

Conclusion

The landlord's Application for an Order of Possession is dismissed, without leave to reapply.

The 10 Day Notice dated November 03, 2017, is cancelled and as is of no force or effect.

This tenancy continues until ended in accordance with the *Act*.

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and to recover half of the filing fee for this application from the tenants.

Item	Amount
Unpaid November 2017 Rent	\$750.00
Unpaid December 2017 Rent	750.00
Unpaid January 2018 Rent	750.00
Half of the Filing Fee for this Application	50.00
Total Monetary Order	\$2,300.00

The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: January 23, 2018

Residential Tenancy Branch