



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL MNDL MNRL OPR
CNR FFT MNRT RR

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities; for a monetary order for the cost of emergency repairs; for an order reducing rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord.

The hearing did not conclude on the first scheduled date and was adjourned for a continuation. My Interim Decision was provided to the parties.

The landlord and both tenants attended on both scheduled dates and each gave affirmed testimony. The tenants also called 2 witnesses who gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*, or should it be cancelled?
- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?

- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Have the tenants established a monetary claim as against the landlord for the cost of emergency repairs?
- Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The landlord testified that this month-to-month tenancy began on December 15, 2017 and the tenants still reside in the rental unit. Rent in the amount of \$1,300.00 per month is payable on the 1st day of each month. The landlord did not collect a security deposit from the tenants in exchange for the tenants removing garbage from the rental property. No other agreements were made. The rental unit is half of a duplex, and the other side is also owned by the landlord and is also currently tenanted. A copy of a tenancy agreement has been provided as evidence for this hearing, however the page showing the amount of rent payable and the commencement and term of the tenancy is missing.

The landlord further testified that the tenants only paid \$300.00 rent for January and \$1,000.00 for February. No rent has been paid for March, 2018.

On January 8, 2018 the landlord personally served one of the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy has been provided for this hearing by the landlord, and it is dated January 18, 2018 and contains an effective date of vacancy of January 19, 2018 for unpaid rent in the amount of \$1,000.00 that was due on January 1, 2018. Another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities has been provided by the tenants, which is dated January 8, 2018 and contains an effective date of vacancy of January 18, 2018 for unpaid rent in the amount of \$1,000.00 that was due on January 1, 2018. Only the first of two pages has been provided.

The landlord also testified that the tenants have also removed the washer, dryer, fridge and stove to the outside, for someone to take away, without asking the landlord anything. The landlord reduced rent from what he intended to collect by \$100.00 because the tenant might be able to help with repairs in the future. The tenant said he was a professional and the landlord paid him to do some work, but he did zero work. A letter of the landlord has also been provided for this hearing explaining that the landlord paid the tenant \$390.00

cash to repair a water leak, but has not done anything and the landlord had to hire a plumber. The landlord seeks recovery of the \$390.00 paid to the tenant.

The landlord has also provided a type-written version of events, which states that the landlord agreed to discount March, 2018 rent by \$500.00 if the tenant replaced the broken hot water tank with one that had 2 year warranty, and proof of purchase. However, the tenant installed one that had no warranty and did not provide proof of purchase. As a result, the landlord lowered the rental discount to \$200.00 but the tenants have not paid any rent for March, 2018. It also states that the tenants always waited for the last day of the month to report issues that require repair. The letter states that the landlord's monetary claim totals \$4,990.00.

A monetary break-down of the landlord's claim is as follows:

- \$1,000.00 for January, 2018 rent;
- \$650.00 for a damage deposit;
- \$650.00 for a pet deposit;
- \$2,000.00 for damage to a door, fences and the 4 missing appliances;
- \$390.00 for failing to repair the water leak;
- \$300.00 for unpaid rent for February, 2018.

The first tenant (KGS) testified that the tenancy was supposed to start in December, 2017 but the rental unit was too bad to move into. The tenants fixed it up but didn't move in until January, 2018. Therefore, the rent paid for December, 2017 was to be applied to January, 2018, and the tenants' witness who negotiated with the landlord on the tenants' behalf told the tenant that the landlord said the tenants would have low rent or no rent. The tenants' witness is the tenant in the other side of the duplex.

The landlord had told the tenants they could do anything to increase the value. The tenants painted, replaced the toilet and repaired some plumbing in the bathroom sink. There were no light fixtures, but mice and rats, and the parties agreed that the rent they paid for December, 2017 was to be applied to January, 2018.

The tenants paid \$300.00 for February.

About 2 weeks ago the hot water tank blew open. It is located in the kitchen and water leaked all over.

The parties also had an agreement for the tenant husband to remove garbage and make minor repairs to the rental unit and the neighboring rental unit.

The tenant further testified that the landlord did not serve the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities as he testified, but handed it to the tenants' next door neighbour who gave it to the tenant on January 10, 2018.

The tenants have provided a few documents setting out their claim, one of which proposes that the \$1,300.00 rent paid to the landlord be applied to half a month's rent for December, 2017 and the other half be accepted as a security deposit. It also asks that the pet damage deposit be traded for the fridge and stove, and if no damage is caused by the pets, the landlord will return the pet damage deposit in the sum of \$650.00; that the landlord retain the services of an exterminator for rats and mice and an electrician for the old breaker box; a new toilet; and reimbursement for the following, to be applied to rent for March, 2018 including utilities:

- \$100.00 for light fixtures;
- \$100.00 for rat poison;
- \$25.00 for locks;
- the smoke alarm;
- \$20.00 paint;
- \$900.00 for garbage removal;
- \$400.00 for the stove; and
- \$600.00 for the fridge.

Another document of the tenants claims:

- \$100.00 for court costs;
- \$100.00 for rat supplies;
- \$400.00 for washer and dryer;
- \$600.00 for fridge and stove;
- \$900.00 for garbage removal;
- \$25.00 for keys and lock;
- \$100.00 for light fixture.

The second tenant (JS) testified that he viewed the rental unit on December 15, 2017, and it was in really bad shape. The tenant met with the landlord and the parties agreed that the tenant would fix it up and rent would be reduced. An old furnace in the hallway had a rat hole, the toilets didn't work, kitchen cabinets have 4 rat holes to the hot water tank area, and rat feces were 4 inches thick. The tenant pulled out the hot water tank and the landlord said to fix everything. The fridge had spoiled food in it from previous squatters, and the tenants couldn't get the smell out. The landlord said to get appliances, but the tenants didn't pay much for the fridge. The tenant also told the landlord that he

found a washer and dryer, and the tenant put the old ones by the road. The washer and dryer didn't work and the landlord knew that. However, the landlord called police about someone trying to steal them. One of the appliances was given to the neighbouring tenant.

There were loads of garbage to take to the dump, and many rats inside and outside of the rental property. A shed in the back was full with garbage and more was stored under the house, as well as raw sewage. The tenants had to get rid of the garbage in order to get rid of the rats. The tenants took 11 or 12 loads of garbage to the landfill, and have provided receipts totaling \$900.00. The tenant also fixed the sewer issue and replaced the toilet. One cannot use the front door, or they would fall through the floor. The tenants cannot use plugs because the breaker box throws flames. The wiring is unsafe.

After the tenant did the work, the landlord denied asking the tenant to do it. The tenant also started to build a deck, and the landlord agreed, and the tenant supplied all lumber.

Last month the tenant gave the landlord \$1,000.00 for rent and the landlord agreed that would be okay. The tenant also gave the landlord \$300.00 toward hydro on January 1, 2018.

Photographs have also been provided by both parties, however the landlord does not agree that all of the tenants' photographs are of the rental home.

The tenants' first witness (TE) testified that on January 31, 2018 at about 2:30 p.m. the witness spoke to the landlord on behalf of the tenants due to a conflict between them. The landlord said he wanted \$1,300.00. The witness offered \$1,000.00 and told the landlord to "take it or leave it," and the landlord agreed. The tenants wrote a cheque in February for that amount. Then the landlord crossed out the words "Paid in Full" on the receipt. A copy of the receipt has been provided as evidence for this hearing.

When the tenants first moved into the rental unit there was so much garbage it was ridiculous, including mattresses, piles of rubbish, and about 10 loads. The fridge was 3 inches thick of black mold. The tenant got rid of the garbage in order to get rid of rats from the rental property.

The witness has been in Court with this landlord 3 times, and he hasn't fixed anything. In April, August and another hearing a few months ago, the landlord was ordered 3 times to clean it up. The landlord should never have rented or collected rent from the tenants.

The witness lives on the other side of the duplex, also owned by the landlord. The outlets in that rental unit are black, and some don't work at all.

The tenants' second witness (SS) testified that she has known the tenants for a number of years. The witness told the landlord that the tenants would move in but since the rental unit was in such a bad state, the tenants would expect free or cheap rent until the place was fixed up. The parties met and made their arrangements.

The witness viewed the rental unit and testified that it was not livable. The witness could smell rat urine and feces. The floor was not stable, there was black mold in the fridge, and the witness refused to go in again until the tenants fixed it up.

Analysis

It's very clear that neither party has complied with the *Residential Tenancy Act*.

A landlord must not exchange a security deposit for work to be performed by a tenant. Therefore, the landlord does not hold any amount in trust for a security deposit or pet damage deposit, and the landlord may not collect one now. The *Act* specifically states that a landlord must not require a security deposit at any time other than when the parties enter into the tenancy agreement, or require a pet damage deposit at any time other than when the parties enter into the tenancy agreement, or when the tenant acquires a pet. Therefore, the landlord's application for \$650.00 security deposit and \$650.00 pet damage deposit is dismissed.

A landlord must ensure that tenancy agreements are prepared and signed by the landlord and by the tenant. In this case, the landlord has provided a tenancy agreement which appears to be signed by a landlord and by a tenant, however the page that sets out the commencement and term of the tenancy and the rental amount payable per month is missing. Therefore, I cannot be satisfied that there is such an agreement or the amount of rent agreed upon. Where a party makes a monetary claim, the onus is on the claiming party to establish the amount. The landlord has provided a copy of a receipt dated November 30, 2017 for December's rent in the amount of \$1,300.00, and I find that amount was payable as monthly for rent effective December 15, 2017 and part of January, 2018. The tenants paid an additional \$300.00 and still owe \$350.00 for January.

I also accept the testimony of the tenants' first witness who negotiated a reduction in rent with the landlord on behalf of the tenants, and the rent was reduced to \$1,000.00 per month effective February 1, 2018. That sum has not been paid, and I find that the tenants owe \$1,000.00 for February, 2018 and \$1,000.00 for March 2018, for a total of \$2,350.00.

With respect to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, considering that I have two separate notices, and neither are the current versions available, and considering the undisputed testimony of the tenant that the landlord gave the form to a

neighbour, I am not satisfied that the landlord has issued a notice in accordance with the *Residential Tenancy Act*, and I cancel both of them.

A landlord must ensure that move-in and move-out condition inspection reports are completed in accordance with the regulations, and it's the landlord's responsibility to provide and maintain rental premises in a state of decoration and repair that makes it suitable for occupation by a tenant. A tenant must pay rent when it is due even if the landlord fails to maintain the rental unit. If the landlord fails to maintain the rental unit, the tenants have the option of applying for dispute resolution.

In order to be successful in a claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

The landlord has applied for damages respecting appliances that the tenants do not deny have been removed from the rental unit. However, given that the landlord has failed to ensure that the move-in condition inspection report was completed, I have no evidence before me other than the testimony of the tenants and the witness about the condition or value of the appliances and that they were not operable. Further, I have no supporting evidence of the costs to repair a door or the fence; only a ball-park figure by the landlord. Therefore, the landlord has failed to establish element 3 in the test for damages.

The matter of \$390.00 for return of the cash the landlord paid the tenant to make a water leak repair is a matter of employment, and is not within the jurisdiction of the *Residential Tenancy Act*.

The landlord has not established any claim for damage to the unit, site or property, and I dismiss that portion of the landlord's application.

With respect to the tenants' claim, the *Residential Tenancy Act* defines emergency repairs:

- 33** (1) In this section, "**emergency repairs**" means repairs that are
- (a) urgent,
 - (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
 - (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,

- (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
- (iii) the primary heating system,
- (iv) damaged or defective locks that give access to a rental unit,
- (v) the electrical systems, or
- (vi) in prescribed circumstances, a rental unit or residential property.

A tenant may make repairs as described above, but only after requesting the landlord to make the repair, and may request reimbursement by giving the landlord receipts to prove the amounts. The cost of light fixtures is not an emergency repair, nor is paint. A tenant may not replace appliances and expect a landlord to pay for it. I also find that the tenants have failed to establish that garbage removal of \$900.00 was agreed to by the landlord or that it was an emergency repair and the tenants' application for monetary compensation is dismissed.

With respect to rent reduction, the landlord agreed in his written submission to repay the tenants \$200.00 for the hot water tank, since no receipt or warranty were provided as agreed. Having found that the landlord is owed \$2,350.00, I reduce the amount due to the landlord by \$200.00, leaving the amount due to the landlord at \$2,150.00.

Having found that rent was reduced to \$1,000.00 per month from \$1,300.00 per month, I order that the reduction remain in place until all repairs are completed by the landlord.

Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fees.

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 8, 2018 is hereby cancelled.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 18, 2018 is hereby cancelled, and the tenancy continues.

I hereby grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,150.00.

I hereby order the landlord to comply with the *Residential Tenancy Act* by maintaining the rental unit in a state of decoration and repair that makes it suitable for occupation by the tenants.

I further order that the reduction in rent to \$1,000.00 per month from \$1,300.00 per month continue until such time that the landlord has completed the repairs to the rental home.

This order is final and binding and may be enforced.

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 29, 2018

Residential Tenancy Branch