



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

CNL CNR ERP MNDCT OLC RR  
CNL CNR ERP LAT LRE MNDCT MNRT OLC RP

### **Introduction**

This hearing was convened by way of conference call concerning 2 applications made by the tenant which have been joined to be heard together. In the first application the tenant has applied for:

- an order cancelling a notice to end the tenancy for landlord's use of property;
- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- an order that the landlord make repairs to the unit, site or property;
- an order that the landlord make emergency repairs for health or safety reasons;
- an order reducing rent for repairs services or facilities agreed upon but not provided; and
- for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

In the second application the tenant has applied for:

- an order cancelling a notice to end the tenancy for landlord's use of property;
- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- an order that the landlord make repairs to the unit, site or property;
- an order that the landlord make emergency repairs for health or safety reasons;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement;
- an order authorizing the tenant to change the locks to the rental unit;
- an order limiting or setting conditions on the landlord's right to enter the rental unit;
- a monetary order for the cost of emergency repairs; and
- for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant and the landlord attended the hearing and the landlord was accompanied by Legal Counsel. The parties each gave affirmed testimony. Throughout the hearing the tenant continually yelled, screamed and interrupted the landlord's legal counsel, and despite several warnings, was not able or willing to control herself.

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

During the course of the hearing the parties agreed that the tenancy will end on April 30, 2018 and I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on that date.

The tenant did not withdraw the remaining applications, however stated at the commencement of the hearing that the tenant seeks \$1,500.00 for painting the rental home by verbal agreement between the parties. Since the tenancy is ending, I dismiss the tenant's applications for:

- an order cancelling a notice to end the tenancy for landlord's use of property and for unpaid rent or utilities;
- an order that the landlord make repairs and emergency repairs;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement;
- an order authorizing the tenant to change the locks to the rental unit; and
- an order limiting or setting conditions on the landlord's right to enter the rental unit.

#### Issue(s) to be Decided

The issues remaining to be decided are:

- has the tenant established a monetary claim as against the landlord for the cost of emergency repairs?
- has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for painting the rental home and loss of personal items due to flooding?

### Background and Evidence

**The tenant** testified that this fixed term tenancy began on May 1, 2017 and expires in May, 2019. Rent in the amount of \$1,500.00 per month is payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$750.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a single family dwelling, and a copy of the tenancy agreement has been provided as evidence for this hearing by the landlord.

The tenant further testified that the landlord acknowledged at the beginning of the tenancy that the home required painting and repair to some of the walls. The tenant told the landlord that the tenant would call a professional painter who painted while the tenant was away on vacation. The landlord refused to pay for it and the painter was going to put a lien on the house if the tenant didn't pay for it. A document has been provided in handwriting showing details of the hours spent completing the painting and a "cash advance" of \$1,000.00, which the tenant claims as against the landlord.

On November 27, 2017 a flood occurred in the basement of the rental home. The landlord arrived 48 hours after the tenant called, gave the tenant a shop vac and asked the tenant to clean up the water using bleach to prevent mold. The tenant is not sure how long the basement was flooding because the tenant only goes down there once a week or so to do laundry. The tenant had had triplets, and as a result of the flooding the tenant lost 3 child's cribs, boxes of receipts, tax receipts, loan documents and personal information. Also lost were photographs and urns of the tenant's late husband and child. The landlord reduced rent by \$200.00 for December for cleaning up the mess, but did not compensate the tenant for any damaged items. The landlord only laughed saying babies don't use the items anymore so it doesn't matter.

The landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property, and a copy has been provided as evidence for this hearing. It is dated January 30, 2018 and contains an effective date of vacancy of March 30, 2018. The reason for issuing it states: "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child, or the parent or child of that individual's spouse)."

The tenant claims \$1,500.00 for the painting completed and for cleaning up water from basement flooding, and denies ever unplugging the sump pumps.

**The landlord** testified that before the tenant moved in the parties talked about painting, and the landlord told the tenant that the whole upper level of the rental home had been painted in December, 2016, and any further painting would be done at the tenant's expense. However, the tenant texted the landlord saying that the painter was going to put a lien on the house. Someone paid for it.

The landlord further testified that water sometimes seeps in when there's lots of rain, and there are some structural repairs required. The landlord put in 2 sump pumps, and will get another; it's been happening since the landlord has owned the house, and large shelving units have been installed in the basement. The landlord arrived at the rental unit as soon as she could but lives in a rural area so didn't get the tenant's text messages right away. The landlord gave the tenant a \$200.00 rent rebate for cleaning up the water.

Since August, the tenant has been talking about moving out due to issues with neighbours, and the landlord agreed to end the tenancy.

### Analysis

I have reviewed all of the evidentiary material provided by the parties, including numerous text messages. The parties agree that the flooding in the basement occurred. I do not doubt that some of the tenant's personal belongings were damaged or destroyed. However, in order to be successful in a claim for damages, the onus is on the tenant 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 landlord's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the tenant made to mitigate the damage or loss suffered.

In this case, the landlord testified that due to the landlord's rural living location text messages are only received sometimes up to 2 days after they are sent. A landlord is required to have an emergency contact number posted in the rental unit. To wait for 2 days to respond to a text message from the tenant about a flooding event in the rental home is contrary to the *Residential Tenancy Act*. The tenant has provided photographs but has no evidence and provided no testimony about the value of the losses. I also note photographs showing lots of what appears to be stable shelving units in the basement which the landlord also mentioned in testimony. Aside from perhaps cribs, the tenant could have stored the other items on the shelves, and I am not satisfied that

the tenant did what was reasonable to mitigate any damage or loss suffered, especially considering the tenant was well aware of the sump pumps and potential for water.

With respect to the claim for painting, the landlord denies that there was any agreement that the landlord would pay for new paint and that the rental home had been painted throughout the upper level in 2016, but authorized the tenant to do so at the tenant's expense. Where it boils down to one person's word over another, the claim has not been proven, and I dismiss the tenant's claim for painting.

The tenant also claims \$300.00 for cleaning up the flooding basement, however the parties have also agreed that the landlord paid the tenant \$200.00 by reducing rent for December, 2017. I am not satisfied that the tenant has established that any further compensation was ever sought by the tenant. I find that the tenant has already been paid for the work, and I dismiss the tenant's claim for the cost of emergency repairs.

I order the parties to comply with the *Residential Tenancy Act* with respect to the security deposit currently held in trust by the landlord.

### Conclusion

For the reasons set out above, and by consent, I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on April 30, 2018 and the tenancy will end at that time.

The tenant's applications for an order cancelling a notice to end the tenancy for landlord's use of property and for unpaid rent or utilities are hereby dismissed.

The tenant's applications for an order that the landlord make repairs and emergency repairs are hereby dismissed.

The tenant's application for an order reducing rent for repairs, services or facilities agreed upon but not provided is hereby dismissed.

The tenant's applications for an order that the landlord comply with the *Act*, regulation or tenancy agreement are hereby dismissed.

The tenant's application for an order authorizing the tenant to change the locks to the rental unit is hereby dismissed.

The tenant's application for an order limiting or setting conditions on the landlord's right to enter the rental unit is hereby dismissed.

The tenant's application for a monetary order for the cost of emergency repairs is hereby dismissed.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed.

I order the parties to comply with the *Residential Tenancy Act* with respect to the security deposit currently held in trust by the landlord.

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: April 04, 2018

---

Residential Tenancy Branch