



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NAN LI MACDONALD COMMERCIAL REAL ESTATE SERVICES LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR FFT RP RR, FFL OPRM-DR

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") pursuant to section 46;
- an order to the landlord to make repairs to the rental unit pursuant to sections 32 and 62;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application pursuant to section 72.

This hearing also dealt with the landlord's application pursuant to the *Act* for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and,
- authorization to recover the filing fee for this application pursuant to section 72.

This matter was originally heard on November 20, 2019. At the original hearing, the landlord was granted an order of possession and the tenant's application for repairs was dismissed. The remaining issues were adjourned. The following applications between the parties and will be adjudicated herein:

- tenants' application for an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- tenants' application for authorization to recover the filing fee for this application pursuant to section 72;

- landlord's application for a monetary order for unpaid rent pursuant to section 67; and,
- landlord's application for authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Preliminary Issue: Additional Evidence Submitted by the Landlord

The landlord submitted additional evidence after the original hearing date. The interim decision adjourning this matter specifically ordered that the adjournment was not an opportunity for either party to submit additional evidence. The Residential Tenancy Branch Rules of Procedure 3.15 requires a respondent to submit evidence seven days prior to the hearing. Since the landlord has submitted documents after the original hearing, I find that the landlord was not produced these documents in accordance with the Rule of Procedure stated above and for this reason; I have not relied on the evidence submitted by the landlord after the date of the original hearing.

Issue(s) to be Decided

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72?

Is the landlord entitled to a monetary order for unpaid rent pursuant to section 67?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The tenancy agreement states that the tenancy started on May 1, 2018. The monthly rent was \$2,800.00, payable on the first day of each month. The tenant paid a security

deposit of \$1,400.00. In the original hearing I found that the tenants did not pay the rent for September 2019 or thereafter.

The tenant testified that the rental unit had numerous problems throughout the tenancy.

The tenant testified that the electricity did not work throughout half the house throughout the tenancy. The tenant also testified there were heating problems. The tenant testified that at first a bedroom had no heat and then the heat was too high. The tenant testified that they could not use the solarium because the foundation was caving in and leaking. The tenant also testified that there was mold throughout the house and their children were getting sick. The tenant also complained that the kitchen lights were flickering. The tenant also complained that the house was infected with mice and ants.

The tenant testified that they complained of these problems since move-in but the landlords never made adequate repairs. The tenant testified that the repairs were slow and inadequate. The tenant provided an email from 2018 requesting an electrician because "...one of the bathroom lights were short circuited."

The landlord testified that the tenant did not complain of any problems until May 2019. The landlord provided a copy of email complaint dated May 31, 2019. The landlord testified that the landlord diligently made the repairs requested by the tenants after they complained.

The landlord testified that, after receiving the complaint on May 31, 2019, they immediately attempted to access the rental unit to assess the electrical and water leak issues. However, the landlord testified that the tenant would not co-operate with scheduling an inspection.

The landlord testified that the tenant complained again on June 25 that the whole house electrical was not working. The landlord testified that an electrician was sent the following day to make repairs. The landlord testified that the tenant complained again on July 15, 2019 that the electricity was not working and an electrician was sent the same day to make repairs.

The landlord testified that the roof repair was completed on August 2019. The landlord testified that the roof repair was delayed by lack of co-operation from the tenants.

The landlord testified that a Ten-Day Notice was issued and sent to the tenant by registered on September 5, 2019. The Ten-Day Notice stated unpaid rent of \$2,800.00 as of September 1, 2019. The tenant acknowledged service of the Ten-Day Notice.

The landlord testified that the tenant has not paid any rent since the Ten-Day Notice was delivered.

Analysis

The tenants and the landlord both have claims for monetary compensation. I will evaluate each of their claims separately.

(i) Tenants' claim for monetary compensation

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Section 32 of the *Act* states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

I find that the tenant has not provided sufficient evidence to establish that the defects in the property existed prior to the written complaint issued on May 31, 2019. However, based on the testimony of both parties, I find that tenants endured multiple defects throughout June 2019 until the repairs were completed in August 2019. I find that these deficiencies, including mold, water leaks and electrical problems are issues in violation of "health, safety and housing standards" as set forth in section 32 of the Act.

I find that the tenants are entitled to a rent reduction in the amount of 25% of rent for this period. Accordingly, I order that the tenants are entitled to a rent reduction of \$2,100.00 (25% of the monthly rent for June 2019, July 2019 and August 2019).

(ii) Landlord's claim for monetary compensation

In the original hearing, I found that the tenant was obligated to pay the monthly rent in the amount of \$2,800.00, on time and in full each month, up to and including the rental period commencing September 1, 2019. Further, I found that the tenants have not paid the rent for September 2019 or thereafter.

The tenant argued that rent was not paid because the tenants claim that repairs were not being performed by the landlord. However, section 26(1) of the Act states that "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..." Accordingly, the tenants are obligated to pay rent as due under the tenancy agreement regardless of their repair claims.

Section 7(1) of the Act states that "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results." Pursuant to section 71(1), I find the landlord is entitled to a monetary award of \$2,800.00 for unpaid rent in September 2019.

I also find that the Tenant owes \$6,954.80 for overholding the rental unit for the period of October 1, 2019 to December 15, 2019, calculated as described below.

Section 57 of the Act defines an "overholding tenant" as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. The section goes on to say a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

In the case before me, as per the Ten-Day Notice; I find the tenancy ended on September 20, 2019. However, I am satisfied from the landlords' undisputed testimony that the tenants continue to overhold the rental unit up to the date of the hearing on May 10, 2019.

Residential Tenancy Policy Guideline #3 states that tenants are not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the *Act*, however if tenants remain in possession of the premises (overholds), the tenants will be liable to pay occupation rent on a per diem basis until the landlords recovers possession of the premises.

As the tenants remained in the unit for the full rental periods of October 2019 and November 2019, the landlord is entitled to receive a total of \$5,600.00 for overholding that period. In addition, since the tenants remained in the rental unit from December until the agreed move out date of December 15, 2019, I find that the landlords are entitled to overholding rent in the amount of \$1,354.80 (15 days at the per diem rate of \$90.32) for May 2019.

Since both parties were successful in their applications, I dismiss both requests for reimbursement of filing fees as being offsetting.

Accordingly, I grant the landlord a monetary order of **\$7,654.90**, as calculated below. The landlord may partially satisfy this monetary award by retaining the security deposit.

<u>Item</u>	<u>Amount</u>
June 2019 rent reduction	-\$700.00
July 2019 rent reduction	-\$700.00
August 2019 rent reduction	-\$700.00
September 2019 unpaid rent	\$2,800.00
October 2019 overholding damages	\$2,800.00
November 2019 overholding damages	\$2,800.00
December 2019 overholding damages	\$1,354.80
Total	\$7,654.90

Conclusion

I grant the landlord a monetary order in the amount of **\$7,654.90**. The landlord may retain the security deposit to partially satisfy this award. If the tenants fail to comply with

this order, the landlord may file the order in the Provincial Court to be enforced as an order 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: December 15, 2019

Residential Tenancy Branch