



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL-4M CNR FFT MNDCT

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 "**10 Day Notice**") pursuant to section 46;
- cancellation of the landlord's Four Month Notice to End Tenancy for Demolition, Renovation, Repair, or Conversion of Rental Unit (the "**Four Month Notice**") pursuant to section 49;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$3,500 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified, and the landlord confirmed, that the tenants served the landlord with the notice of dispute resolution form and supporting evidence package. The landlord testified, and the tenants confirmed, that the landlord served the tenants with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Interim Issue – Landlord's Monetary Claim

The landlord included a monetary order worksheet in the evidence package he provided to the tenants and the Residential Tenancy Branch (the "**RTB**"). On it, he set out the

particulars of a monetary claim of \$5,845.45. He also included receipts and invoices supporting this amount. The landlord has not made an application for a monetary order.

At the hearing I advised the landlord that, if he believed he is entitled to a monetary order from the tenants, he must make an application setting out his claim to the RTB. I advised him that, as such, I would not consider any evidence that does not relate to the tenants' application, but instead was tendered in support of his request for a monetary order.

Issues to be Decided

Are the tenants entitled to:

- 1) an order cancelling the 10 Day Notice and the Four Month Notice
- 2) a monetary order for \$3,500; and
- 3) recover their filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into an oral tenancy agreement starting October 16, 2019 to rent the rental unit (the "**Current Unit**"). Many particulars of the tenancy agreement are in dispute, including:

- 1) the monthly rent;
- 2) what months of rent are payable; and
- 3) the size of the rental unit.

In brief, the tenants testified that they understood that monthly rent was to be \$1,000, that they would not be obligated to pay any rent for the months of October 2019 (a half month) and November 2019, and that the rental unit included the use of the all three floors of the residential property.

The landlord testified that monthly rent was initially \$1,250, that the tenants had to pay November 2019 rent, and that the tenancy did not include use of the basement (which contains two bedrooms, a washer and a dryer). He testified that once he learned the tenants were using the basement, he increased monthly rent to \$1,600.

The current tenancy is not the first tenancy agreement into which the parties. On September 1, 2018, the tenants rented a rental unit from the landlords (the “**Former Unit**”) on a one-year fixed term (the “**Former Tenancy**”). The tenants paid the landlord a security deposit of \$800 and a pet damage deposit of \$400. Neither party gave evidence as to who retained the security deposit after Former Tenancy.

On September 27, 2019, the landlord texted the tenants advising them that their fixed term lease for the Former Unit was expiring and asked them to call him. He indicated that he wanted the Former Unit empty. The tenants and the landlord then engaged in a text message exchange negotiating the terms that the tenants would vacate the Former Unit and move into the Current Unit. The landlord submitted this exchange into evidence.

In a text message on October 4, 2019, following some preliminary negotiations, the tenants wrote:

So we have talked ... we can do \$1250 with some conditions. We would do it with October & November no rent and the \$1500 incentive to cover costs. We would be out by months end. We ABSOLUTELY NEED the roof [of the Current Unit] tarped. We would also want more than a few months as well and would require a lease. It took us 8 months to find this house [the Former Unit]... We will take care of removing the stuff in the house if there is a bin or somewhere to dispose. You rent a carpet cleaner and I will do that myself as well as the cleaning. Lucky for us our cat is a good mouse hunter ... talk to your partner and let us know ... thanks, [tenants]

On October 4, 2019, the landlord replied:

Ok we will do 6 months lease after if city takes time to permit new buildings

[T]hen after go month to month rent we will provide you 2 month notice before you moving

You pay \$1250 month from November 1st 2019

October month rent free

[street address of the Current Unit]

[street address of the Former Unit]

We are provide you tarp
Stove & fridge
you can install
all other things you can take care Cleanup & utilities [street address of Current Unit].

The tenants testified that this arrangement was not acceptable to them, as they were not willing to install the tarp, stove, and fridge themselves. They testified that they did not respond to this message and paid their October rent of \$1,600 for the Former Unit to the landlord (which he accepted). They testified they understood this to mean that the tenancy for the Former Unit would continue.

At some point over the Thanksgiving long-weekend (October 12 to 14), a flood occurred in the Former Unit, which caused serious water damage to the unit as well as to the tenants' mattress and box spring. This flooding precipitated renewed discussions about the tenants moving out of the Former Unit. It is here that the parties' stories diverge.

Tenants' Evidence

The tenants testified that, on October 15, 2019, the landlord attended the Former Unit alone and met with them in the garage. They testified that at this meeting, the parties agreed that the tenants would move into the Current Unit immediately, on the following terms:

- 1) the tenants would have use of the entire residential property the Current Unit is located on (that is, use of the basement);
- 2) the tenants would pay \$1,000 in monthly rent;
- 3) the landlord would pay the tenants \$400 for moving expenses (which they testified he did at the October 15, 2019 meeting);
- 4) the tenants would not have to pay rent at the Current Unit for the months of October or November 2019; and
- 5) the landlord would install the tarp on the roof of the Current Unit or the fridge or stove.

The tenants did not provide any documentary corroboration of this agreement. They testified that this was strictly an oral agreement.

The tenants testified that they accepted this offer and started packing and moving immediately. They testified that they packed and moved their belongings in 23 hours, and spent two days packing their belongings and moving, and a further two days cleaning the Current Unit, which was a “complete mess”. The tenants submitted three photos of the interior of the Current Unit into evidence, the first being of moldy insulation (which I understand remains in the Current Unit). The second being of photos of pails “hidden in the walls”, which, I understand, were collecting water from the roof the tenants allege was leaking. The third and fourth photos are a before and after pair set of photos of the kitchen of the Current Unit. I am unsure when the “before” photo was taken. I note that, in the “before” photo the Current Unit, while appearing unfinished, does not appear to be a “complete mess”.

Landlord’s Evidence

The landlord disputed this version of events. He did not deny meeting the tenant on October 15, 2019. Instead, he testified that he met with the tenants and they agreed to move into the Current Unit on the terms set out in his October 4, 2019 text message. He testified he gave the tenants \$1,600 representing the return of the full amount of October rent for the Former Unit.

The landlord provided an affidavit of a contractor who swears that he witnessed the landlord provide the tenants \$1,600 cash. The landlord also provided a letter from a landscaper who writes that he witnessed the landlord give the tenants \$1,600 cash.

Neither of these third parties were called to give evidence at the hearing.

10 Day Notice at Current Unit

On November 15, 2019, the landlord served the tenants with a copy of the 10 Day Notice by posting it on the door of the Current Unit. It specified an effective date of November 25, 2019. It stated that the tenants failed to pay monthly rent of \$1,600 that was due on November 1, 2019.

The tenants denied that they received the 10 Day Notice on November 15, 2019. Rather, they testified that they received it on November 18, 2019.

In any event, the tenants testified that they did not believe that any rent was owing for the month of November 2019, per their understanding of the oral tenancy agreement.

However, they testified that on November 23, 2019 after receiving the 10 Day Notice, they transferred \$200 to the landlord. The testified they did this because they figured that they paid \$1,600 for October 2019 rent for the Former Unit, and that it had not been returned, and that, as they vacated the Former Unit mid-month, they were entitled to the return of \$800 of that amount. Furthermore, they testified that as they understood October 2019 rent to Current Unit to have been waived, that, even though they also understood the November 2019 rent to be waived, the \$800 could be applied to the rent that landlord alleged was owed for November 2019, and that the tenants would pay the difference between that amount at \$1,000 (the amount the tenants allege the monthly rent to be). Hence, the payment of \$200 to the landlord.

The tenants provided no documentary evidence of this payment of \$200. The landlord denied receiving it.

The tenants did enter into evidence a text message exchange with the landlord dated November 19, 2019 and November 23, 2019. It reads:

November 19, 2019

Tenants: Keeps getting better. All we wanted was the one year at \$1,000 per month we agreed to on October 15th in the garage at [street address of Former Unit] You know, when we had NO CHOICE...

Tenants: We have been nothing but respectful, ESPECIALLY with maintaining your properties, accommodating beyond belief and this is what we get...

Landlord: Please e transfer rent with in 5day for November month to [email address] Please

Tenant: \$1000.00

Tenant: ??

Landlord: Please pay full my contract with you 1 year but you not move

November 23, 2019

Tenant: \$200 transferred to cover the balance of November rent. \$1600 paid at [street address of Former Unit]. \$800 owing to us.

Tenant: Please refrain from further communication until this issue has been resolved by an appointed arbitrator.

Tenant: \$1000.00, as agreed, will be transferred for December rent.

Tenant: Messages, unless emergency, will not be responded to.

Date unknown after November 23, 2019

Landlord: You not paid anything for November I also paid to you for moving & other if you want keep please pay full \$1600 month it is my contract with you otherwise you can move with in and of notice

Tenant: We have disputed the notice. Wednesday November 20, 2019. As requested, please refrain from further communication until resolved by an appointed arbitrator.

The landlord alleged that the tenants paid no rent for the month of November 2019. He testified that they paid \$1000 for December 2019, and that they attempted to pay \$1,000 via e-transfer of the month of January 2020, but that he has decline the e-transfer. The tenants confirmed that they paid \$1,000 for December 2019 rent and sent an e-transfer for \$1,000 for January rent, but that the landlord declined it.

The landlord testified that he wrote \$1,600 on the 10 Day Notice as the amount of rent owing because, when he learned that the tenants were using the basement of the Current Unit, he increased the amount of rent owing to what the tenants paid at the Former Unit.

Four Month Notice

Neither party entered a copy of the Four Month Notice into evidence. At the hearing, the landlord testified he served the Four Month Notice on the tenants on November 19, 2019. He testified that he indicated that the reason for issuing the Four Month Notice was to "demolish the rental unit". He testified that, on the form, he indicated that he has "obtained all permits and approvals required by law to do this work".

At the hearing, the landlord admitted that, in actuality, while he has applied for a permit to demolish the rental unit, he has not yet obtained the permit.

Tenants' Monetary Claim

The tenants testified that they left several items at the Former Unit when they initially moved, and when they returned the items were gone. The provided advertisement showing the value of the items. On their monetary order worksheet, the tenants appear to have added 12% of sales tax to the amount in the advertisements.

The items and their values are as follows:

	Worksheet Amount	Advertisement Amount
Shop Vac	\$222.88	\$199.00
Extension Cord	\$67.66	\$60.41
Lawn Mower	\$334.88	\$299.00

In addition to the items the tenants testified were missing from the Former Unit when they returned for them after the initial move, the tenants are claiming compensation for the damage to their mattress and box spring caused by the flood of the Former Unit. They submitted an advertisement for a replacement mattress. As with the missing items outlined above, the tenants included a claim for 12% sales tax on the mattress on their monetary order worksheet.

The tenants also claim for lost wages for the time spent moving from the Former Unit to the Current Unit and for the time it took them to clean the Current Unit. The tenants claim that tenant WM lost 40 hours of work, for which he would earn \$30 per hour (\$1,200) and tenant EW lost a week's wages in the amount of \$935.

In total, the tenants claim as follows:

Shop Vac	\$222.88
Extension Cord	\$67.66
Lawn Mower	\$334.88
Mattress and Box spring	\$782.88
Lost Wages - WM	\$1,200.00
Lost Wages - EW	\$935.00
Total	\$3,543.30

The landlord made no submissions with respect to the tenants' monetary claim beyond stating that he disagrees with their testimony entirely and that it is "completely wrong".

Analysis

Four Month Notice

Section 49(6) of the Act states:

Landlord's notice: landlord's use of property

(6)A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:
(a)demolish the rental unit;

Based on the testimony of the landlord, I find that, at the time he issued the Four Month Notice, he had not obtained all the necessary permits and approvals required by law. As such, I find that the Four Month Notice was issued prematurely and is invalid. Accordingly, I order that the Four Month Notice is cancelled and of no force and effect.

10 Day Notice

In order to determine if the 10 Day Notice is valid, I must first determine the amount of monthly rent the parties agreed would be paid for the Current Unit. As there is no written tenancy agreement, I must consider the parties' conflicting oral testimony and consider each of their credibility. In determining credibility, it is useful to compare the testimony of the parties to their past conduct (as can be determined through an examination of the documentary evidence). Too many, or too significant, discrepancies between a party's testimony and the documentary record casts doubt on a party's credibility.

The landlord alleges that the tenants agreed to pay monthly rent of \$1,250, and that he unilaterally increased it to \$1,600 once he discovered that they were using the basement. I find that this is not consistent with the text messages entered into evidence by both parties.

On November 19, 2019, the landlord demands "please pay full my contract with you 1 year but you not move." I understand this to be a demand for payment of \$1,600

pursuant to the terms of the Former Tenancy Agreement. A few days later, the landlord reiterates his demand for payment of “full rent” of \$1,600 per “the contract”.

If the landlord intended to increase the monthly rent from \$1,250 to \$1,600 because (as he testified) he discovered the tenants were using the basement, I would have expected that he would reference this fact in some way in his text messages with the tenants.

Instead, the landlord appears to demand compliance with the terms of the Former Tenancy Agreement and does not mention the use of the basement. The landlord's actions are not consistent with his testimony.

Additionally, I note that at no point during the text message exchange in October 2019 did the landlord indicate that the tenants would not have use of the basement. Had there been a limitation as to what areas of the Current Unit the tenants would be able to access, I would have expected the landlord to mention this in the negotiations. He did not.

As such, I do not find the landlord's testimony to be credible.

I find the tenants' testimony to be mostly in harmony with the documentary evidence. I find that they refused the landlord's offer to move in to the Current Unit for a monthly rent of \$1,250. I find it their explanation as to why they agreed to move to the Current Unit on short notice to be reason and understandable. I accept their evidence that they moved into the Current Unit within such a short timeframe (and at not-insignificant personal expense) because the landlord agreed that they would only have to pay \$1,000 in monthly rent.

I also accept their evidence that the landlord offered to give the \$400 in compensation for their moving expenses. I do not accept the landlord's evidence that he returned the October 2019 rent for the Former Unit (\$1,600) to the tenants.

I recognize that the landlord provided two witness statements stating that they witnessed the landlord giving the tenants \$1,600 cash. However, these witnesses were not called to give evidence, and I cannot say how they were able to determine the amount of money the landlord gave to the tenants. It is possible that they merely saw the landlord give the tenants a large amount of money and accepted what the landlord told them after the fact (that it was \$1,600) as being true. Given that I have determined that the landlord is not a credible witness, I find it more likely than not that this occurred, rather than the tenants providing untrue testimony.

The tenants' testimony regarding the amount of rent is consistent with their actions. They testified they agreed to pay \$1,000 per month for the Current Unit. Upon being served with the 10 Day Notice, they texted the landlord on November 19, 2019 stating, “all we wanted was the one year at \$1,000 per month agreed to on October 15th”. Upon

receiving the landlord's demand for November rent, replied "\$1000.00??" I understand this question to be rooted in the confusion caused to them by the amount of \$1,600 listed on the 10 Day Notice.

The tenants' responses are not those of people who have agreed to pay monthly rent of \$1,250.

As such, I find that monthly rent for the Current Unit is \$1,000.

I do not, however, find that the parties agreed that the tenants would not have to pay any rent for November 2019. This is not consistent with the tenants' actions.

On November 23, 2019, the tenants wrote that they transferred \$200 to the landlord to cover the balance of November rent because, as stated above, they believed that they should receive an \$800 credit towards November rent because they paid full October Rent at the Former Unit, but only resided there for half the month.

Additionally, I recognize that while they sought to pay no rent for November 2019 during the negotiations in early October 2019, the landlord never agreed to that term, or included that term in his counter offer.

I find it likely that, on October 15, 2019, the parties did not discuss what was to happen to the balance of the October Rent from the Former Unit. Perhaps the landlord thought that he could keep it, and that this was the basis for him giving free October rent at the Current Unit. Perhaps the tenants thought that the free October rent at the Current Unit was independent of the October rent for paid for the Former Unit, and that the balance of the Former Unit's October rent would be credited towards their November rent. I cannot say.

However, although there is no application before me to do so, I must address the issue of what is to happen with the October rent for the Former Unit. If I do not, I simply delay the issue, and invite the landlord to issue a further notice to end tenancy for non-payment of rent, which would require a further hearing, at which time the parties would need to address this issue. This is not in the interest of either party.

As the Former Tenancy ended by a mutual agreement, the landlord does not, as of a right, have an entitlement to the entire amount of October rent for the Former Unit. (Usually, if a tenancy is ended by the unilateral action of a single party, the Act requires a tenancy to be ended on the day before the next rent is due, thus alleviating the issue of partial months' rent pay. However, the Act does not specifically address mutual agreements to end tenancies.)

I find that the parties agreed to end the Former Tenancy on October 15, 2019. As such, I find that, after this date, the tenants were deprived of the substantial benefit of the

Former Unit. I do not find it appropriate that they should be required to pay rent for the Former Unit when they were unable to derive benefit from it. As such, I find that the landlord is not entitled to retain the balance of October rent for the Former Unit (\$800). Accordingly, I find that the tenants should be credited that amount towards their rental arrears.

I find that, by paying \$200 and by crediting \$800 from October rent for the Former Unit, the tenants do not owe any arrears for the month of November 2019.

As such, I find that the 10 Day Notice was incorrectly issued (as no arrears were owing) and should be cancelled.

If I am incorrect, and \$800 from the October Rent for the Former Unit should not be credited towards November Rent for the Current Unit, I would still find that the Notice ought to be cancelled.

Section 52 of the Act states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must
[...]
(e) when given by a landlord, be in the approved form.

I find that this necessarily implies that the approved form be filled in correctly. As I have found that monthly rent is \$1,000, and not \$1,600, and as the 10 Day Notice states that the tenants are in arrears in the amount of \$1,600, I find that the form is not filled in correctly. I find that the incorrectly stated amount of arrears caused the tenants confusion and may have contributed to them not paying the full amount of arrears within the required time frame.

As I have ordered both Notices cancelled, I find that the tenancy shall continue and that the tenants are not in arrears for the month of November 2019. Monthly rent for the Current Unit is \$1,000.

Tenant's Monetary Claim

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish

that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

So, the tenants must prove it is more likely than not that the landlord breached the Act, that they suffered quantifiable damages as a result of this breach, and that they acted reasonably to minimize the damages.

Shop Vac	\$222.88
Extension Cord	\$67.66
Lawn Mower	\$334.88
Mattress and Box spring	\$782.88
Lost Wages - WM	\$1,200.00
Lost Wages - EW	\$935.00

a. Lost Wages

I find that the tenants did not suffer a loss of wages as a result of a breach of the Act by the landlord. Rather, they suffered a loss of wages as a result of entering into a mutual agreement to end the Former Tenancy and agreeing to move into the Current Unit within a very narrow timeframe. I find that the tenants did (or ought to have) factored in their lost wages when agreeing to the time frame to move into the Current Unit.

As there was no breach of the Act or the tenancy agreement, I decline to order any compensation to the tenants for their lost wages.

b. Missing Personal Items

The tenants testified that when they returned to the Former Unit from the Current Unit a shop vac, extension cord, and lawn mower were missing. I have no evidence before me that would indicate that the landlord caused or contributed to these items being lost or removed from the Former Unit. As such, I find that the tenants have not met the burden to prove that the landlord breached the Act or the tenancy agreement. Accordingly, I decline to order any compensation to the tenants for the missing personal items.

c. Damaged Mattress and Box Spring

The tenants provided no evidence as to the cause of the flood in the Former Unit that damaged their mattress and box spring. I am unsure if it was caused by the landlord's failure to maintain the Former Unit in a reasonable standard of repair, the actions of a third party, the unforeseeable failure of some material, or by the tenants themselves. As such, I find that the tenants have not met the burden to prove that the landlord breached the Act or the tenancy agreement. Accordingly, I decline to order any compensation to the tenants for their damaged mattress and box spring.

As the tenants have been partially successful in their application, they are entitled to recover their filing fee from the landlord.

Conclusion

Both notices to end tenancy are cancelled. The tenancy shall continue. Monthly rent is \$1,000. The tenants do not owe any rental arrears for November 2019.

The tenants' claim for a monetary order is dismissed, without leave to reapply.

Pursuant to section 72 of the Act, the landlord must pay the tenants \$100 representing reimbursement of the tenants' filing fee.

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 29, 2020

Residential Tenancy Branch