



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GEC Marine-Gateway GP Inc. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes PSF, RP, RR, OLC, MNDCT, FFT
PSF, RP, RR, OLC, MNDCT, FFT
CNR, MNDCT, FFT

Introduction

This hearing was convened by way of conference call concerning 3 applications made by the tenants which have been joined to be heard together.

The first application was filed on August 1, 2021 and seeks the following relief:

- an order that the landlord provide services or facilities required by the tenancy agreement or the law;
- an order that the landlord make repairs to the rental unit or property;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement;
- 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 landlord for the cost of the application.

On August 2, 2021 the tenants filed another application seeking the identical relief.

On September 28, 2021 the tenants filed a third application seeking:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- 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 landlord.

One of the named tenants attended the hearing and represented the other tenant. An agent for the landlord also attended. The parties each gave affirmed testimony, and the landlord called 1 witness who also gave independent affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions.

The hearing did not conclude during the time scheduled and was adjourned to continue later in the day.

The parties agree that evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

During the course of the hearing the tenant advised that the first 2 applications are duplicates because the tenants had tried the online application prior to the Residential Tenancy Branch re-vamping the website. Originally the tenants applied for a repair order, and once it had been typed in, the tenant didn't know what the form looked like, and they appeared to be separate.

The Rules of Procedure provide that multiple applications contained in a single application must be related. Generally the primary application would refer to a notice ending the tenancy. However, given that the tenants' applications for the balance of the receipt sought were filed in early August, 2021 and the applications were joined to be heard together, I heard all applications of the tenants.

Also, during the course of the hearing the tenant advised that the repairs have been completed and the application for an order that the landlord make repairs to the rental unit or property is withdrawn.

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*?
- Have the tenants established that the landlord should be ordered to provide services or facilities required by the tenancy agreement or the law?
- Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided?
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically to complete repairs in a timely manner?

- Have the tenants 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 damages for loss of use of the rental unit, free from unreasonable disturbance and with respect to repairs required?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on May 17, 2020 and reverted to a month-to-month tenancy after May 31, 2021, and the tenants still reside in the rental unit. The current landlord took over the tenancy agreement sometime in October, 2020. Rent in the amount of \$2,025.00 is payable on the 1st day of each month. The tenants paid a security deposit of \$1,012.50 to the previous landlord on December 6, 2017 as well as a pet damage deposit in the amount of \$1,012.50, both of which are held in trust by the current landlord. The rental unit is a townhouse, and a portion of the tenancy agreement has been provided for this hearing by the tenants.

The landlord's agent further testified that on September 27, 2021 the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and a copy has been provided for this hearing. It was posted to the door of the rental unit by the building caretaker. It is dated September 27, 2021 and contains an effective date of vacancy of October 7, 2021. It states that the reason for issuing it is for unpaid rent in the amount of \$4,050.00 that was due on August 1, 2021 and September 1, 2021.

There was no agreement for the tenants to not pay rent, but they stopped paying due to a leak in the rental unit. The tenants notified the landlord of the leak in July and on July 30th the mechanical company viewed it. The leak was in a heating or cooling unit in the living room of the rental unit and mold began. The parties had in-person conversations as well as email exchanges wherein the landlord's agent requested the tenants pay the outstanding rent, but they refused and had filed a claim. The landlord also offered the tenants to stay at the landlord's downtown facility. That was a verbal conversation between the tenants and the caretaker.

On August 12 the same mechanical company returned for further repairs. On August 23 the landlord confirmed that a mold removal company would be awarded a contract to do the removal which was organized with the tenants. On September 10 the arrived and finished the repair, then final repairs were completed on September 22 including the wall, baseboards and flooring.

Repairs were finished on September 22, 2021, however during COVID it was hard to arrange contractors. The landlord's agents did their best to engage a mechanical company, a removal company and contractors for final repairs. The landlord did not try to deny responsibility to repair the damage, and never said repairs wouldn't be made, but the *Act* states that the tenants have to pay rent. The landlord wants to retrieve the unpaid rent and obtain an Order of Possession.

The landlord's witness is the manager of investment and operations.

The witness testified that when the landlord took possession of the property some issues existed that the landlord has been trying to address. The witness was made aware of the leak in the rental unit and understands that the landlord's team has been working to address it. A lot of emails have been exchanged between the former caretaker and the property manager about how to fix it and a time line.

The tenants have refused to pay rent even though the landlord's agents have demonstrated efforts to solve the problems. In September, 2021 the issue was fixed, but due to the tenants' refusal to pay rent, a notice to end the tenancy was issued. The landlord filed an Application for Dispute Resolution and the hearing is scheduled for February 28, 2022.

The landlords have not made any offers to the tenant to not pay rent, but to stay elsewhere until repairs were complete.

The tenant testified that on July 4, 2021 the tenants reported a leak from the HVAC. The tenants thought it was a 1-time event but later noticed bubbling. The landlord arranged for a mechanical company to inspect, and on July 5 they removed a grate which released a tonne of water and exposed mold growth. He recommended to let it dry and leave it exposed to the air and get a restoration company to deal with the mold, and that condensation would need to be monitored. The tenants did so but noticed more sweating.

On July 6 the landlord attended with a facilities manager and former property manager. During that inspection, the HVAC was disconnected and again the tenants were instructed to monitor it for more sweating. The landlord said that would take 3 or 4 days and advised the tenants to stay elsewhere for that time, but did not offer other facilities. However, the parties agreed to a plan and the tenants requested a formal report by the landlord or mechanical company so the tenants could claim it on their insurance, and the landlord agreed.

By July 8, the main valve had to be shut off to the entire unit, at the request of the landlord, rendering it completely inoperable.

The tenants have provided copies of numerous emails exchanged between the parties. On July 26 the tenants proposed a resolution, not an ultimatum, but to open discussion about terms that were reasonable. The tenants wanted a time-line for the HVAC connection and restoration as well as a copy of the report and abatement of rent for August until the HVAC system and the area had been restored.

The previous landlord had agreed to the tenants' proposal. A copy has been provided for this hearing, and it requests production of the mechanical company report by July 30; an agreement to provide a timeline for repairs and restoration of the HVAC system by July 30; a timeline for the restoration and cleanup of the area surrounding the system by July 30; an abatement of rent from August until repairs were completed and reimbursement of half of July's water bill. It seeks a response by the landlord by no later than July 27. The request was sent again to the landlord on July 29. An agent of the landlord replied that there had been a turn-over in staff and the writer is following up. The tenants again requested a copy of the report.

On July 30 the tenants put a stop-payment on the August rent payment, and advised the landlord that the tenants still didn't have HVAC and there was no response to the tenants' proposal.

Completed repairs took 4 days – August 12, then September 10 when mold remediation took place. The mold remediator took out the entire drywall in the surrounding area.

It was 33 days since reported and 29 days during a heat wave and exposure to mold. No meaningful work was completed by the landlord or contractors and the tenants still haven't received the report. The tenants' work from home routine had been interrupted and the landlord didn't start to take steps to remediate until after the tenants stopped paying rent. The tenants told the landlord of that intention, and the landlord didn't respond or object, and at no time did the landlord ask for the outstanding rent until September and on September 2, 2021 the tenants told the landlord that despite numerous attempts, there was still black mold.

The landlord did not offer another place to stay, not in person or by the landlord's predecessor. The tenants pushed hard for a formal report to get insurance coverage for living expenses in case the rental unit was rendered useless.

Analysis

Firstly, where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. Once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), the tenant has 5 days to pay the rent in full, in which case the Notice is of no effect, or dispute the Notice. In this case, the tenants have not paid the outstanding rent, but disputed the Notice on September 28, 2021. The Notice was served on September 27, 2021 by posting it to the door of the rental unit, which is deemed to have been served 3 days later, or September 30, 2021. I find that the tenants disputed the Notice within the 5 days required, however, the law specifies that a tenant must pay rent when it is due even if the landlord fails to comply with the *Act* or the tenancy agreement. The tenants have not paid rent for the months of August or September, 2021.

I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and I find that it is in the approved form. The tenants have not paid the rent, and I dismiss the tenants' application disputing it.

The law also states that where I dismiss a tenant's application to cancel a notice to end the tenancy, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. Having found that it is in the approved form, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenants.

Since the tenancy is ending, I also dismiss the tenants' applications for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order reducing rent for repairs, services or facilities agreed upon but not provided; and for an order that the landlord provide services or facilities required by the tenancy agreement or the law.

With respect to the tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, I have reviewed all of the evidence of the parties.

Where a party claims damage or loss from another party, 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 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 claiming party made to mitigate any damage or loss suffered.

In this case, the tenants claim monetary compensation of \$6,072.20 for relocation services, moving expenses and cleaning fees. I do not agree that the landlord should pay any of those expenses for the tenants, however I accept that the tenancy was devalued from July to September, 2021 and therefore the tenants have satisfied element 1. Considering the numerous emails sent by the tenants to the landlord, I am also satisfied that the tenants have established mitigation.

A landlord is required to provide and maintain a rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant, and in a condition that complies with housing standards required by law. I accept that the landlord repaired the system, and completed mold removal and finishing work. I also accept the testimony of the landlord's agent that during COVID it was hard to arrange contractors. The landlord's agent testified that on August 12 the same mechanical company returned for further repairs, but it wasn't until August 23 that the landlord confirmed that a mold removal company would be awarded a contract to do the removal, then did not retain the services of a mold remediator despite numerous requests by the tenants indicating that there was still mold as at September 2.

Having found that the tenancy has devalued as a result of the on-going work, and considering the testimony of the tenant that the leak was reported on July 4, 2021 and the work was completed on September 22, 2021, I am satisfied that the tenants have established that the loss suffered was a result of the landlord's failure to maintain and make repairs in a timely manner. Considering the report of the leak was made by the tenants several weeks prior, I find that the landlord has not complied with the *Act*.

There is no requirement in law or in the tenancy agreement for the landlord to provide a copy of any report to the tenants, although it certainly would have been a good idea in order for the tenants to make a claim through their insurance company.

With respect to quantum, the tenants were inconvenienced for almost 3 months as a result of the landlord's failure to maintain the rental unit, and I find that the tenants have established nominal damages in the amount of \$900.00, being \$300.00 for each month or partial month.

Since the tenants have been partially successful with one of the applications the tenants are also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, the tenants' application for an order cancelling a notice to end tenancy for unpaid rent or utilities is hereby dismissed.

The tenants' application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed.

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

The tenants' application for an order that the landlord provide services or facilities required by the tenancy agreement or the law is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenants.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,000.00.

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: December 10, 2021

Residential Tenancy Branch