

## **DECISION**

Dispute Codes      CNC MNDC OLC ERP RP OPT RR FF O

### Introduction

This hearing convened on March 23, 2010, and reconvened for the present session on May 12, 2010. This decision should be read in conjunction with my interim decision of March 23, 2010.

### Issues(s) to be Decided

Are the Tenants entitled to an Order to cancel a notice to end tenancy issued for cause pursuant to section 47 of the *Residential Tenancy Act*?

Are the Tenants entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement pursuant to section 67 of the *Residential Tenancy Act*?

Are the Tenants entitled to Orders to have the Landlord comply with the Act, make emergency repairs, and to make repairs to the unit; and to obtain an Order of Possession; and allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided under sections 62, 32, 33, and 65 of the *Residential Tenancy Act*?

### Background and Evidence

The parties attended and confirmed receipt of my interim decision dated March 23, 2010 and there were no requests made for clarification or correction.

The female Tenant testified that they moved back into unit #108 over the period of March 26, 2010 and March 27, 2010 in accordance with my interim order from March 23, 2010. The female Tenant confirmed that the required repairs were completed prior to March 26, 2010; however the bathroom countertop which showed the presence of mould at the onset of the restoration was re-installed against her request. The Tenant confirmed that she has no evidence to support that mould was present on the countertop at the time it was reinstalled.

The Landlord testified that she was out of town from December 8, 2009 to December 15, 2009 and that during her absence her husband and son were responsible for her

duties. The Landlord confirmed that during the month of December 2009 her husband and son were renovating unit #109, which is next door to unit #108, and that a current tenant who was the occupant of unit #119 was scheduled to move into unit #109 on January 1, 2010, and had, on occasion, gone into unit #109 to see how the renovations were progressing. The Landlord confirmed that it was possible that during her absence in December that her husband, son, and the tenant from unit #119, could have been in unit #109 together, as alleged by the Tenant's previous testimony.

The Landlord stated that her husband was not available to provide testimony for this proceeding.

When asked which material term was breached by the Tenants to cause issuance of the 1 Month Notice to End Tenancy the Landlord replied that the Tenants breached a material term when they failed to remove all of their belongings from unit #108 so the repairs could be completed.

The female Tenant testified they are seeking a Monetary Order of \$577.00 an amount equal to one month's rent as compensation under the Act for the loss of quiet enjoyment and having to deal with the high handed behaviour of the Landlord and Board Members during the repairs as they felt like they were being bullied. They are also seeking an Order for reduced rent equivalent to two additional months of rent for having to live in a temporary unit for the period of January 9, 2010 to March 27, 2010 which meant they had to live out of the two units, going back and forth to use their washer and dryer and to access other items as required. The female Tenant stated that there was a two week period when they were not allowed to access their washer and dryer.

The female Tenant argued that while they did not have to pay hook up fees for their telephone or cable while temporarily residing in unit # 119, they did continue to pay for hydro in unit #108 during their absence. The female Tenant confirmed that they were not required to pay hydro or any additional costs to occupy unit #119.

The Landlord testified that at no time were the Tenants denied access to unit #108.

The female Tenant confirmed that now that the repairs have been completed and they have regained possession of the rental unit they would like to withdraw their requests for an Order of Possession, requests to have the Landlord comply with the Act to make repairs and emergency repairs, and the "other" request.

## Analysis

The 1 Month Notice to End Tenancy was issued due to a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. A material term is a term written into the tenancy agreement that both parties agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

Based on the aforementioned, and upon careful consideration of all of the evidence before me, I find the Landlords have failed to prove the Tenants breached a material term of their tenancy agreement when the Tenants chose not to remove their entire possessions from unit #108. I also find the evidence supports that the 1 Month Notice was issued in a retaliatory manner in response to the Tenant's application for dispute resolution. Having made these findings the 1 Month Notice to End Tenancy issued February 8, 2010, is hereby cancelled.

The Tenants are seeking \$577.00 as compensation for damage or loss under the Act, primarily for the loss of their quiet enjoyment of unit #108, and an additional \$1,154.00 in reduced rent for services or facilities agreed upon but not provided, during the three months they were temporarily located.

In determining the Tenants' claim I must consider if both parties upheld their requirements under the tenancy agreement. The Tenants are required to pay rent while the Landlords are required to provide the Tenants the opportunity to use the premises fully. If the Tenants are deprived of the use of all or part of the premises through no fault of their own, the Tenants may be entitled to damages, even when there has been no negligence on the part of the Landlords. The parties are also required under section 7 of the Act to ensure they do whatever is reasonable to minimize the damage or loss.

I am required to consider the evidence not on the basis of whether the testimony "carried the conviction of the truth", but rather to assess the evidence against its consistency with the probabilities that surround the preponderance of the conditions before me. As per the aforementioned I find, on a balance of probabilities, that the Landlord was informed of the water leak in December 2009, when the acting caretaker, the Landlord's husband, was informed by the Tenants, and that the Landlord did not inspect the water leak until January 8, 2010.

The Landlords immediately began the demolition of the only washroom in the rental unit, which resulted in the Tenants having to relocate to another unit, without notice. The Landlords acted in haste to dismantle the washroom, immediately on January 8<sup>th</sup>

and January 9<sup>th</sup>, 2010, disrupting the Tenants living accommodation, and then waited six days before having a plumber attend the rental unit on January 14, 2010. It was not until March 11, 2010, almost two full months later, before the professional restoration company was brought in to conduct the repairs which were completed on March 25, 2010. During this time the relationship deteriorated between the parties whereby the Landlords took a forceful hand in issuing the Tenants the Notice to End Tenancy.

As per the above, I find the Landlords failed to mitigate the damage or loss incurred by the Tenants, in contravention of section 7 of the Act, which increased the period the Tenants suffered an interruption to the quiet enjoyment of their rental unit. Therefore I award the Tenants \$577.00 for compensation for damage or loss under the Act.

With respect to the Tenants' request for \$1,154.00 in reduced rent, I find that given the length of time that has transpired since the Tenants filed their application on February 5, 2010, that I must consider a rent abatement for past rent paid, during the restoration period, instead of their request for continued reduced rent.

The evidence supports that the Tenants continued to uphold their requirements under the tenancy agreement during the restoration period by paying their rent in full and on time; even though they were living in temporary accommodation without all of their possessions and their washer and dryer. I do not accept the Landlords' argument that the repairs could not be completed while the Tenants' possessions were in the unit, as clearly the contractors were able to complete the repairs with those possessions in the unit. Therefore I award the Tenants \$576.99 in rent abatement which is comprised of 1/3 of three month's rent. ( $1/3 \times \$577.00 \times 3$ ).

As the Tenants have been successful with their application I hereby award them recovery of the \$50.00 filing fee.

**Monetary Order** – I find that Tenants are entitled to a monetary claim as follows:

Compensation for damage or loss	\$577.00
Rent abatement	576.99
Filing fee	50.00
<b>TOTAL AMOUNT DUE TO THE TENANTS</b>	<b>\$1203.99</b>

Conclusion

The 1 Month Notice to End Tenancy issued on February 8, 2010, is HEREBY CANCELLED and is of no force or effect.

I HEREBY FIND in favor of the Tenants' monetary claim in the amount of **\$1,203.99**. The Tenants are at liberty to reduce their future rent payments until the amount of reduced rent is equal to this one time monetary award.

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: May 18, 2010.

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Dispute Resolution Officer