# Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes OPR, MNR, O, MNDC, OLC, ERP, PSF, RPP, LRE, FF

Introduction

This was the hearing of application by the tenant and by the landlord. The hearing was conducted by conference call. The landlord participated and was represented at the hearing by his lawyer. The tenants attended the hearing. The tenants applied for a monetary order; they originally claimed payment of $4,900.00 and later amended their application to claim $25,000.00. They also requested orders that the landlord comply with the *Residential Tenancy Act*, Regulation and tenancy agreement, perform emergency repairs, provide services or facilities, return the tenants' personal property and suspend or set conditions on the landlord's right to enter the rental unit. The landlord applied for an order of possession and a monetary order in the amount of $763.00.

Issue(s) to be Decided

Are the tenants entitled to a monetary award and if so in what amount?
Are the tenants entitled to other relief including a repair order, an order that the landlord provide services and facilities, suspending the landlord's right to enter the rental unit or directing the return of personal property?

Is the landlord entitled to an order for possession?
Is the landlord entitled to a monetary order and if so in what amount?

Background and Evidence

The rental unit is the upper portion of a house in White Rock. The tenancy began on September 16, 2010 for a fixed term ending January 31, 2011. Monthly rent is $1,200.00 plus utilities, payable on the first of each month. The tenants paid a $600.00 security deposit at the commencement of the tenancy. The tenancy agreement provided that:

> At the end of this fixed length of time the parties recognize that the Tenancy Agreement between them will legally terminate and come to an end. At which time, if agreed upon, the Landlord and Tenant may enter into a new Tenancy Agreement. A one month notice must be given in all circumstances.

The landlord testified that the rental property is an old cottage in White Rock. He purchased the property with the intention to tear it down and build a new house on the land. The landlord placed an internet advertisement for a short-tem rental and the tenants responded. The landlord said that he told the tenants that he intended to tear the house down in February. According to the landlord the tenants were also looking for a short-term rental because they had plans to move to Australia.

The landlord said that the tenants told him on December 2, 2010 about a sewage flood in the basement of the rental property. In his written submission the landlord said:

> On December 2nd, 2010 the Tenant asked the Landlord to attend Dec. 3, 2010 at the premises and showed him a sewage flood in the basement. The sewage drain had backed up leaving raw sewage in the basement. The Landlord called his insurance company and a plumber. The plumber was unable to unplug the drain. On December 4th, 2010 the Landlord had Roto-rooter come out to unplug the drain.
>
> On December 4th, 2010, the Tenants advised the Landlord that they did not want to stay any longer in the premises, due to the foul smells and noise from fans the restoration company had installed. The Tenants also advised the Landlord that he had found alternative accommodations.

The landlord said that he has paid $1,460.00 towards alternative accommodation, repaid the tenants' $600.00 security deposit and offered to pay moving and storage costs until January 31, 2011. The landlord also gave the tenants $100.00 for groceries. He has not been paid for outstanding utility bills. The tenants paid the landlord $1,200.00 for December's rent.

The landlord hired a restoration company to clean up after the flood. By letter dated December 17, 2010 the restoration firm reported to the landlord that raw sewage had escaped from the plumbing system in the upstairs bathroom. The restoration manager reported that he started emergency cleanup procedures on December 4, 2010. In the letter the manager said:

> Due to extensive repairs to restore this loss, (name of restoration company) would require the home to vacated during the repairs. The home will be inhabitable during this period of time. Please advise when the tenant has vacated the premises so we can continue with the restoration of this home. (reproduced as written)

Counsel for the landlord advised that the quoted passage was intended to state that the house would be uninhabitable during the period of repairs.

Notwithstanding the tenants' statements that they could not stay in the rental unit, they refused to vacate the rental unit. According to the tenant she wanted to continue to occupy the rental despite her health concerns apparently because the tenants wished to have a yard sale at the rental property and wanted to continue to use the house for business purposes as a home office art studio and gallery.

The locks to the rental property were changed by the tenant who is a locksmith; they were changed again by the landlord and then changed a second time by the tenant.

The landlord wrote to the tenant on December 17, 2010. He took the position in his letter that the tenancy agreement which was intended to be of short duration was frustrated because the damage to the rental unit and the extent of the repairs required are so significant that the rental unit cannot be occupied for an extended period. The landlord also suggested that the tenants had abandoned the rental unit and requested that the tenants contact the landlord to arrange for the removal of their personal belongings.

The tenants obtained legal representation. On December 23, 2010 their lawyer wrote to the landlord and requested that the landlord set up a time when the tenant could remove her belongings from the rental property. The landlord arranged with the tenants' lawyer to have the tenants remove their belongings on December 27, 2010. On December 24, 2010 the tenant sent an e-mail to the landlord wherein she said in part:

> My, you are cunning... Sorry but we are cancelling this arrangement you made with my Legal Council.
>
> As my Investor is now very upset with your treatment of us & our situation. He is now getting involved & seeking his Lawyer's council...
>
> So sit tight for now, we will let you know the next step...

(reproduced as written)

On December 26, 2010 the tenants' lawyer wrote the landlord to advise that she was no longer counsel for the tenants.

At the hearing the tenants claimed that they suffered health problems as a result of the leak of sewage into the residential property; the female tenant suffered a serious skin infection that the tenants claimed was due to bacteria in the rental unit. It is the tenants' position that the landlord is liable in damages for the tenants' health problems and other claimed losses including labour spent cleaning and painting the rental unit, rent the tenants have paid during the tenancy, the male tenant's lost wages and damages for "Displacement" and emotional distress. They claimed that their health problems were due to the landlord's negligence and failure to disclose problems with the rental property and its plumbing.

The tenants claimed that they had a verbal understanding with the landlord that they would be allowed to continue as tenants until at least May, 2011.

The landlord claimed an order ending the tenancy pursuant to section 56.1 of the *Residential Tenancy Act* because the rental unit is uninhabitable. The landlord requested an order for possession. The landlord also claimed payment of $763.78 that the landlord said was due for unpaid utility bills, for lock changes for rent for three days in December, for $100.00 cash advanced to the tenants and a November rent payment shortfall.

When, after hearing from the tenants and the landlord for close to an hour, I noted the absence of any documentary evidence to substantiate the tenants' claimed health problems and claims for expenses and income loss, the female tenant said that she wanted to speak to her lawyer. She exited the conference call and did not return to the hearing. I concluded the hearing shortly after the female tenant left the conference call.

On January 17, 2011, after the hearing was concluded a written submission was received from the tenants at the Residential Tenancy Office. On January 21, 2011 a letter was submitted by a lawyer on behalf of the tenants. This was followed by a letter received from counsel for the landlord on January 27, 2011. I have not reviewed and will not consider any of these additional documents in arriving at my decision in this matter.

Analysis and conclusion

The tenants claimed to have suffered illness and infection as a result of bacterial contamination of the rental unit. They have not provided any medical evidence to support their claims. The tenants claimed that the landlord's negligence and failure to disclose problems with the rental property caused their loss and damage. The tenants have not provided any evidence to show that the flood in the rental property was due to the landlord's negligence, or that the landlord had any knowledge of a problem with the rental property that he concealed or failed to disclose to the tenants.

The tenants have not provided any documents to support a claim for loss of wages or loss of income. The tenant's have not provided any documentary evidence of expenditures made to improve the rental unit and there is no evidence that the landlord approved the tenant's work or that he agreed to reimburse the tenants for expenditures and work done to the rental unit. The landlord is not obliged to compensate the tenants for unsolicited work done to the rental unit.

I find that the tenants have not provided evidence sufficient to prove, on a balance of probabilities that they have suffered any health problems or illness related to their say in the rental unit or due to infections contracted as a result of the flood in the unit. The tenants have not provided evidence to show that there has been negligence on the part of the landlord that has caused damage or injury to the tenants and the tenants have not provided any evidence of actual loss. In the absence of proof of these essentials, the tenants' claims for a monetary order for compensation for damage or loss are dismissed without leave to reapply.

I accept the landlord's evidence that the tenancy was intended to be of short duration because the landlord intended to tear the house down and build another on the land. This is reflected in the tenancy agreement which was for a fixed term ending January 31, 2010. The tenants said that the landlord orally agreed to the possibility of a longer tenancy, but in this case the terms of the written contract are clear and unambiguous and I find that oral evidence should not be admitted to alter or vary the express terms of the contract. I find that the flood that occurred on or about December 3, 2010 rendered the rental unit uninhabitable for at least the duration of the tenancy and that this occurrence amounted to a frustrating event ending the tenancy agreement. I consider that continued performance of the tenancy agreement became impossible by December 17, 2010 when the restoration company advised that the rental property would have to be vacant for an extended period and the tenancy agreement became frustrated and at an end as of that date. Based on these findings I order that the tenancy has ended and I grant the landlord an order for possession effective two days after service on the tenants. This order may be registered in the Supreme Court and enforced as an order of that court. Because the tenancy has ended there is no basis for the tenants' claims

for repairs, the provision of services or facilities or for orders that the landlord comply with the Act, Regulation or tenancy agreement and these claims are dismissed without leave to reapply. If the tenants have not removed their belongings from the rental unit I direct the landlord to give the tenants an opportunity to retrieve their possessions from the rental unit.

With respect to the landlord's monetary claims set out in his written submission I do not allow his claim for December rent. The tenants paid rent for December and the landlord then expended sums to pay for other accommodation for the tenants. I do not find that the landlord should be reimbursed for three days rent in December. The landlord claimed for a short payment for November and money advanced for groceries, each in the amount of $100.00. He claimed $100.80 paid to a locksmith.

I find that the landlord is entitled to the sum of $344.62 paid for utilities on the tenant's behalf because utilities were not included in the monthly rent. I find that the landlord is entitled to recover the $100.00 shortfall in November's rent payment. I do not award the $100.00 said to have been given for groceries because i consider it to have been a gratuitous payment, made outside of the tenancy agreement. I find that the landlord has not proven that the tenant should pay for the locksmith's bill. This was incurred on December 17th and there had been a struggle with respect to possession of the rental unit and some police involvement; I am not satisfied that the landlord showed that the locksmith charge was justified at the time the charge was incurred.

I have awarded the landlord the sum of $444.62. He is entitled to recover the filing fee for this application for a total award of $494.62 and I grant him an order under section 67 in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that court.

Dated: February 14, 2011.