

DECISION

Dispute Codes DRI, CNR, MNDC, RP

Introduction

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

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order regarding a disputed additional rent increase pursuant to section 43; and
- an order to the landlords to make repairs to the rental unit pursuant to section 33.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. Tenant PD (the tenant) confirmed that she and her daughter received the landlords' 10 Day Notice posted on her door on September 8, 2011. The landlords confirmed that the tenant handed the landlords' receptionist a copy of the tenants' application for dispute resolution and dispute resolution notice of hearing on September 9, 2011. I am satisfied that these documents were served in accordance with the *Act*.

During the hearing there was some discussion as to the dates when the parties exchanged written evidence with one another and the extent to which these evidence packages were complete. Landlord LT (the landlord) said that the landlords did not receive all of the tenants' evidence package until September 29, 2011. However, she said that the landlords preferred to proceed with the hearing and did not wish to request an adjournment. The tenant testified that the two evidence packages that she received from the landlords were different from one another. The landlords testified that they sent the second evidence package, identical to the first one, to ensure that the tenants had the landlords' written evidence before the hearing. I was satisfied that the parties had one another's evidence packages and that neither party objected to proceeding with this hearing.

At the commencement of the hearing, the landlord said that the Ministry of Social Development (the Ministry) had issued a cheque to the landlord for the rent identified as owing in the landlords' 10 Day Notice. Although the tenant disputed the landlords' claim that the Ministry had made this payment on her behalf, the landlords testified that they considered the 10 Day Notice invalid because they have accepted payment for the amount identified as owing in the 10 Day Notice.

Based on the landlords' testimony, I advised the parties that I was allowing the tenants' application to cancel the 10 Day Notice. I advised the parties that I found that the 10 Day Notice was no longer in effect and that this tenancy continues.

Issues(s) to be Decided

Should an order be issued to the landlords regarding the amount of the disputed rent increase requested by the landlords? Are the tenants entitled to a monetary award for losses or damage arising out of this tenancy? Should an order or orders be issued to the landlords for repairs to the rental unit?

Background and Evidence

The tenant(s) commenced this tenancy for a subsidized rental unit on June 1, 1999. There was disagreement between the parties as to the current monthly rent and the rents charged for previous months.

The tenant provided oral and written evidence that her rent increased from \$320.00 per month to \$510.00 in September 2011. She alleged that this rent increase exceeded the rent increase that was allowed under the *Act* and the *Regulations* established under the *Act*.

The landlords' representatives testified that the apparent increase from \$320.00 to \$510.00 was not an actual rent increase but resulted from reassessments of the tenants' circumstances based on the information the tenants had provided and authorized the landlords to obtain from the Ministry. The tenant's daughter, listed as a tenant on the tenancy agreement, is younger than 25 and is a full-time student. The landlord testified that some of the changes in the rent charged by the landlord result from the delays in obtaining information to confirm that the tenant's daughter is in fact registered as a full-time student. The landlords' policies involving the obtaining of information regarding requests for hardship requires the landlord to obtain a signed authorization from the tenant to enable the landlord to obtain information from the Ministry to confirm the tenants' eligibility for a hardship allowance. The landlord also said that if hardship were not applied to the tenants' rent the flat rate for a two person family in this type of rental unit has increased from over the past year.

The landlord initially provided incorrect oral testimony regarding the previous rental charges for this rental unit. The landlord's representative, LE, clarified this testimony when she stated that the tenants' monthly rent was set at \$362.00 in December 2009. However, when the landlord confirmed that the tenant qualified for hardship allowances, the tenants' monthly rent was reduced to \$320.00 from September 1, 2010 until August 31, 2011. She said that the hardship allowance was no longer available when the

tenant did not sign an authorization form allowing the landlord to obtain information about the tenants' income once the 12-month hardship allowance given for the period ending on August 31, 2011 expired. LE stated that the tenants' rent increased by \$140.00 as of the information that was then available to the landlords on September 1, 2011 and a further \$50.00 on September 8, 2011.

The landlord and LE testified that the tenant may very well qualify for the hardship allowance if the tenants' income remains similar to that obtained the previous year. If that proves the case, they both testified that the tenants' monthly rent would be returned to the \$320.00 she was previously paying and that this rent adjustment would be effective to September 1, 2011. LE stated that this change could occur in as little as two days if everything were in order. The landlord and LE insisted that they could not review the tenants' eligibility for the hardship allowance without a signed authorization from the tenant, an authorization that the tenant had until now not provided to the landlord.

The tenant said that she was unaware of any authorization form that the landlord had asked her to sign in order to qualify for the hardship allowance. She could not recall having signed a previous authorization. She said that she would consider obtaining the necessary information from the Ministry for the landlord and would authorize her worker at the Ministry to convey information about her income that qualifies her for the hardship allowance.

Analysis – Tenants' Application to Dispute Rent Increase

Based on the oral testimony of the parties, it appears that there has been a genuine misunderstanding regarding the reason why the tenants' monthly rent increased. Rather than a true rent increase, I find that the tenants' monthly rent increased because she has not completed the proper paperwork for the landlord. The landlord(s) could only commence the process of obtaining information they needed from the Ministry to restore the hardship allowance the tenants were previously receiving that led to her reduced rental payments until August 31, 2011 if the tenant(s) were to sign the required authorization form. The landlord's Building Manager/ Supervisor committed to deliver this form to the tenant later that afternoon. Although the tenants' signature of the required form provided no guarantee that the hardship allowance would be restored, it appeared that this process was likely to alleviate this dispute if the tenants' income had not increased during the past year.

Based on the evidence before me, I find that there has been no rent increase for this tenancy. Instead, I find that the tenants' omission to authorize the landlord to obtain information from the Ministry about the tenants' income is responsible for the removal of

the tenants' hardship allowance applied to her rent. The removal of the tenants' hardship allowance has led to an increase in the tenants' rent as of September 2011.

As I find that no rent increase has in fact occurred and there is a remedy available to the tenants to resolve their eligibility for a hardship allowance, I dismiss the tenants' application to dispute the alleged rent increase charged by the landlord without leave to reapply.

Analysis – Tenants' Claim for a Monetary Award

Although I have reviewed and considered the tenants' oral, written and photographic evidence regarding her claim for a monetary award, I find little evidence that would support any such award. In support of the application for a monetary award of \$25,000.00, the tenants provided only a few invoices, receipts or estimates. The tenant itemized some of these specific costs as follows:

Item	Amount
Paint	\$297.15
Spices (loss from lack of access to garden)	40.00
Couch	800.00 + taxes
Mice hole	30.00
Dog Escape due to broken fence	110.83
Overpaid Rent \$66.00 x 12 months	792.00
Pictures	39.31
Total of Above Items	\$2,109.26

The tenants provided little to support their claim for paint, nor did they provide anything in writing demonstrating that the landlord had authorized the tenant(s) to incur this cost and reimburse them for this item. The tenant said that the landlord authorized this expenditure; the landlords denied that they provided any such authorization.

The tenants applied for replacement of their couch that the tenant maintained was damaged through the landlord's failure to address the mice infestation in her rental unit. However, the tenant testified that she has not yet replaced this used couch nor has she any receipt for her original purchase of this couch.

I dismiss the tenants' application for a monetary award to reimburse them for spices they could not grow due to the landlords' failure to properly maintain their yard. I do so

because the tenants provided little to demonstrate their entitlement to any such monetary award.

The tenant's claim for the dog escape involved an incident where the tenant incurred an \$80.00 cost to retrieve one of her dogs that had been impounded when it escaped from her yard. The tenant entered oral, written and photographic evidence to support her assertion that the escape of her dog resulted from the landlords' failure to repair the bottom of her fence. I do not find that the landlords are under any obligation to keep a fence in condition to contain animals. If the tenants knew that there was a problem with the condition of the fence, they should not have been letting their dog (or dogs) in the yard unattended. The landlords also maintained that the tenants have been keeping more dogs than are allowed in this rental unit. I dismiss the tenants' application for reimbursement of the fee the tenant incurred to recover her dog from impoundment.

Although the tenants supplied photographs of mice holes, the tenant admitted that these holes have now been repaired, save for two that the landlords have committed to repair. I am unaware of any specific costs the tenants incurred as a result of mice holes. I also note that there is conflicting oral and written evidence regarding the extent to which mice infestation or problems in alleviating this infestation result from the tenants' own actions resulting from the tenants' standards of housekeeping and storage of belongings.

The tenants' application for reimbursement of overpaid rent is unclear and unsubstantiated. I find no basis for allowing the tenants a monetary award for "overpaid rent" during this tenancy and dismiss their application for this item.

Photographic costs incurred by parties as part of the dispute resolution process are not recoverable under the *Act*. Only filing fees for an application can be recovered. The RTB waived the tenants' filing fee for this application.

Analysis – Tenants' Application for Repairs

Much of the tenants' written evidence and some of the tenant's oral testimony was directed at repairs that the tenant claimed the landlords are responsible for providing as part of their tenancy.

At the hearing, the tenant confirmed that the landlords have recently conducted a number of repairs. By the time this hearing occurred, the tenant testified that the landlords had repaired most of the holes where mice were accessing her rental unit. The tenant also confirmed that the landlords have finished the requested repairs and maintenance to her yard.

One of the issues still in dispute involved the tenants' claim that the landlords were responsible for replacing light bulbs and fuses in their rental unit. On this point, the landlord noted the following wording of section 15(b) of the landlord's **Standard Terms Residential Tenancy Agreement- Rent Geared to Income** that reads in part as follows:

...The tenant must replace and pay for any burned-out fuses and light bulbs in the residential premises and leave the same in the residential premises when vacating...

Although the landlord said that the landlords' representatives may occasionally assist a tenant near the beginning of a tenancy by providing a replacement light bulb or bulbs, she maintained that the landlord is under no obligation to do so and in fact, as noted above, this is a standard responsibility of tenants. I find no basis for the tenants' claim that the landlord is responsible for replacing her light bulbs or fuses. I make no order to the landlords requiring them to provide this service to the tenants.

At the hearing, the tenant outlined a number of items that still required repair to her rental unit, including the following:

- The tenant said that there were six to eight floor tiles near her front door that were cracked and "rolling."
- The tenant said that the landlord sent a repair person to fix her gate, but that the gate was functioning properly on the day that the repair person visited. Since then, she said the gate is once more malfunctioning as it is too tight and difficult to open and close.
- The tenant testified that two remaining holes around electrical outlets still needed repairing. She said that the tradesperson who completed the work on covering the other mice-related holes told her that this work could only be performed by an electrician.

The landlord observed that the landlords' efforts to repair items in the tenants' rental unit were often affected by the tenants' failure to clear belongings from those areas that needed repair. Despite concerns regarding the level of co-operation that the tenant has provided to the landlords' previous attempts to repair the rental unit, the landlord committed to inspect and if necessary repair the floor tiles near the tenants' front door, to send someone to complete the repairs to the holes near the electrical outlets, and to inspect and if necessary repair the tenants' gate. The landlord said that this work would be performed by November 6, 2011 if the tenant kept her dogs under control when the inspectors and/or repair people attended.

To ensure that the landlords implement this commitment, I order the landlords to inspect and if necessary repair the following items by November 6, 2011:

1. six to eight floor tiles near the tenants' front door;
2. tenants' gate; and
3. two holes near electrical outlets (one in daughter's bedroom; one in kitchen).

I order the tenants to remove their dogs from any room or area where the inspection and repairs are being conducted.

If the landlords do not comply with their responsibility for implementing these orders by November 6, 2011, I allow the tenants to reduce their December monthly rent by \$50.00 per month until such time as the landlords have complied with the above orders. Once the landlords have complied with the above orders, the tenants' next monthly rent and subsequent monthly rents revert to the amount legally charged in accordance with the tenancy agreement for this tenancy.

Conclusion

I allow the tenants' application to cancel the landlords' 10 Day Notice. The 10 Day Notice of September 8, 2011 is no longer valid and as such this tenancy continues.

I dismiss the tenants' application to dispute an additional rent increase without leave to reapply as I find that no such increase has been charged by the landlords.

I dismiss the tenants' application for a monetary award without leave to reapply.

I order the landlords to inspect and if necessary repair the following items by November 6, 2011:

1. six to eight floor tiles near the tenants' front door;
2. tenants' gate; and
3. two holes near electrical outlets (one in daughter's bedroom; one in kitchen).

If the landlords do not comply with their responsibility for implementing these orders by November 6, 2011, I allow the tenants to reduce their December monthly rent by \$50.00 per month until such time as the landlords have complied with the above orders.

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*.

