



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Landlords: OPR, MNR, MNSD, MNDC, FF  
                             Tenants: MT, CNL, CNR, MNDC, OLC, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlords sought an order of possession and a monetary order. The tenants sought to more time to apply to cancel two notices to end tenancy; to cancel two notices to end tenancy; for a monetary order and to have the landlords comply with the *Residential Tenancy Act* (Act), regulation or tenancy agreement.

The hearing was conducted via teleconference and was attended by an agent for the landlord; one of the landlords; and both tenants.

At the outset of the hearing the parties confirmed the tenants had vacated the rental unit. As such, I confirmed with the landlords that they are no longer in need of an order of possession. I amend the landlords' Application to exclude the matter of possession.

Further, I confirmed with the tenants that they are also no longer in need of more time to apply to cancel the notices to end tenancy; to cancel either notice to end tenancy (10 Day Notice to End Tenancy for Unpaid Rent and 2 Month Notice to End Tenancy for Landlord's Use of Property) or for an order to have the landlord comply with the Act, regulation or tenancy agreement. I amend the tenants' Application to exclude these matters.

In the landlord's amended Application they had sought \$3,200.00 representing 3 months' rent and the security deposit plus filing fee. Upon clarification the landlords seek to retain the security deposit and set it off against the debt of \$1,800.00 for rent for June and July plus the \$50.00 filing fee.

### Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the Act.

It must also be decided if the tenants are entitled to a monetary order for compensation for the landlords' failure to complete repairs and for the loss of quiet enjoyment; and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 32, 67, and 72 of the *Act*.

### Background and Evidence

The parties agree the tenancy began in June 2010 as a month to month tenancy for a monthly rent of \$900.00 due on the 1<sup>st</sup> of each month with a security deposit of \$450.00 paid. The landlords submit that no written tenancy agreement was completed.

The landlords state that the previous tenants were under a written tenancy agreement and were relatives with these tenants. The tenants submit that there was no previous written tenancy agreement with the previous tenants. She confirms that is related to the previous tenants.

The landlords submit that they are not certain that a security deposit was paid but they have sought to retain the security deposit in their Application for Dispute Resolution on the belief that the tenants might pursue return of the deposit.

The parties agree the landlords issued a 2 Month Notice to End Tenancy for Landlord's Use of Property in early May 2014. The landlord submits they served the notice in May but gave the tenants until July 31, 2014 or nearly 3 months notice. The landlord acknowledges that they have not provided compensation to the tenants in an amount equivalent to one month's rent for issuing the 2 Month Notice.

The parties agree the tenants did not pay rent for the months of June and July 2014.

The landlord describes the property as two distinct parcels that were divided with one part being the residential property and another part being used by the landlord for their business. The tenants acknowledge that they were aware at the start of the tenancy that the landlord used part of the property for their business but they thought it would be very minimal usage.

The tenants submit that there was a lot of people access the landlords' area, much more so than they anticipated and she felt it was uncomfortable and unsafe to spend time in the yard or to let her daughter play in the back. The tenants did not submit any documentary or testimonial evidence that they had raised this issue with the landlords during the tenancy.

The tenants also submit that due to the traffic and strangers attending the property they suffered a loss of quiet enjoyment and they seek compensation for this loss.

The tenants also submit that they had requested a number of repairs that the landlord either never started or in some cases did not completely finish. The tenants also submit

that the landlord asked the male tenant to complete a number of repairs they had requested.

The landlord confirms that they had received some requests from the tenants over the course of the tenancy. Some of which they had completed and some which they had started but that the tenants refused to let them continue to completion because of the female tenant's disabilities or because they were disturbing her baby. The landlords submit that any repairs made by the male tenant were not authorised by the landlords.

The tenants submit that sometimes the landlords would start work but that they would stop and then not come back to complete them but that it had nothing to do with the tenants asking them to stop for any reason. The tenants seek compensation for the landlords' failure to make repairs to the rental unit.

The tenants submit that they seek compensation in the amount of \$4,500.00 for both the loss of quiet enjoyment and for failure to complete repairs requested. Further the tenants seek \$500.00 for the work and repairs (including supplies) completed by the male tenant. The tenants have submitted receipts totalling \$126.71.

Some of the items included in the receipts were Metamucil; cigarettes; shower rings and curtains. Other items included ice melt; insecticide; a faucet adapter; drain plug; and an anti siphon valve.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Based on the testimony of both parties I accept the tenants have not paid rent for the months of June and July 2014 in the amount of \$1,800.00. However, I also accept, from the landlord's testimony that they have not provided any compensation to the tenants for issuing a 2 Month Notice for Landlord's Use of Property pursuant to Section 51 of the *Act*.

As such, I find the tenants are entitled to compensation for this Notice in the amount of \$900.00 and I deduct this amount from the rent owed to the landlords.

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the

rental unit in accordance with Section 29; and use of common areas for reasonable and lawful purposes, free from significant interference.

In relation to the tenant's claim for loss of quiet enjoyment I find the tenants were aware of the nature of the use of the business portion of the property when they entered into the tenancy agreement. I find the tenants' assertion that they did not believe that it would be so intrusive to be unlikely.

The tenant full acknowledged that her relatives had been living in the rental unit prior to her tenancy. As such, I find that she was aware or should have been aware of the business use of the property and its impact on the tenancy. Further, I find that the tenants failed to provide any evidence that they had raised this issue with the landlords during the entire 4 year tenancy and as such did nothing to mitigate any loss of quiet enjoyment.

Section 32(1) of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant.

While I accept that the tenants did request some repairs to the property over the course of the tenancy I also accept the landlord's undisputed testimony that they did complete some repairs (hot water tank).

However, much of the evidence presented to me consisted of disputed testimony and different versions of events. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

For example, the tenants have provided no documentary evidence of repairs that were requested or of any issues with delays in the repair processes. Further the tenants provided no evidence that they sought to have the landlords ordered to make repairs by seeking such an order through applying for Dispute Resolution through the Residential Tenancy Branchy.

I find in the case before me I find that the tenants, who have the burden to provide sufficient evidence to support their claim, have provided no additional evidence to corroborate their version of events. As such, I find the tenants claim for compensation for failure to complete repairs fails.

### Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **\$950.00** comprised of \$900.00 rent owed and the \$50.00 fee paid by the landlords for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$450.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$500.00**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlords may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: August 1, 2014

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Residential Tenancy Branch

