



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, ERP, RR

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord make emergency repairs for health or safety reasons; and for an order reducing rent for repairs, services or facilities agreed upon but not provided.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the landlord established that the notice to end the tenancy was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant 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 for aggravated damages for the landlord's failure to deal with pests?
- Should the landlord be ordered to make emergency repairs for health or safety reasons?
- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided, and more specifically for the landlord's failure to maintain the rental unit?

Background and Evidence

The tenant testified that this fixed term tenancy began on September 1, 2014 and expires after 6 months. The tenant still resides in the rental unit. Rent in the amount of \$1,200.00 per month is payable in advance on the 1st day of each month. There are no rental arrears except that the tenant has not yet paid this month's rent. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$600.00 as well as a pet damage deposit in the amount of \$300.00, which are still held in trust by the landlord.

The tenant received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities from the landlord. A copy of the notice has been provided and it is dated January 26, 2015 and contains an expected date of vacancy of February 4, 2014 for unpaid rent in the amount of \$5.00 that was due on January 1, 2015 and unpaid utilities in the amount of \$344.27 following a written demand on January 26, 2015. The tenant testified that the landlord has not provided any request for payment of utilities prior to getting the notice, and the tenant paid the \$5.00 in January, 2015.

The tenant also testified that he has told the landlord about rats in the kitchen in the rental unit as well as moisture and mould in the tenant's baby's bedroom. The tenant asked the landlord to do something in September, 2014 and a pest control person was finally there twice in the last 3 weeks. The tenant has killed 3 rats in the kitchen of the rental unit with a hockey stick. There is evidence of holes under the cupboards in the kitchen that have been previously filled and the tenant believes rats still enter the rental unit from under those cupboards. He showed 5 holes to the landlord; 4 were already there and the last one is from the leaky sink and dishwasher which has rotted the wood. A soft area exists and rats have chewed through. The tenant is pleased that something is finally being done, but the problem is not solved yet.

The tenant also testified that there is "an insane amount of mould in the closet." The tenant can smell it but the landlord said that she can't. The fan in the bathroom doesn't work which adds to the moisture. A suitcase kept in the closet had to be disposed of due to the mould spores and the tenant told the landlord about it.

The tenant seeks an order that the landlord have the cupboard removed and replace the rotten wood and ensure there are no holes for rodents to enter, an order cancelling the notice to end the tenancy and monetary compensation for the landlord's failure to deal with the mould and rodents since the beginning of the tenancy.

The landlord testified that she gave the tenant a copy of the November gas bill and the November/December hydro bill at least a week before giving the notice to end the

tenancy, along with a calculation of the tenant's share of the bills. Then the landlord got another gas bill for December, 2014 and added it to the notice. The utilities owed as shown on the notice are for November and December, 2014, and the tenant was not charged for utilities for September or October, 2014.

The landlord further testified that the tenant paid the \$5.00 rental arrears on February 1, 2015 which was delivered with the Tenant's Application for Dispute Resolution.

The landlord also testified that the tenant had told the landlord about rats and the landlord guessed that perhaps they got in during the move-in. Around the end of September or beginning of October, 2014 a pest control person was retained who looked around and the tenant showed him droppings. The pest control person guessed there was only 1 rat and said that he needed to open a corner of the cupboard. The tenant said that he had the tools and that he and a friend might be able to do it but didn't. The tenant told the landlord that his friend was too busy and couldn't do it. Time went by and another pest control person attended who put poison under the deck and 3 poison traps inside the rental unit. He also said that the deck had to be opened thinking the hole might be under it. The landlord agreed but couldn't find a hole. The pest control person returned again and a rat had eaten some of the bait inside the rental unit and all of the bait on the outside, but no rats were caught. The whole house was checked but nothing was found so more bait was put out. The landlord lives in the same house and hasn't seen any rats. The tenant told her that he killed 3 but the landlord didn't see them, and doesn't remember when.

The landlord further testified that the tenant told the landlord about mould but when the landlord looked she didn't see any. Later the tenant asked for a dehumidifier and the landlord bought one. The landlord returned with one but an argument ensued about utilities and the landlord left with the dehumidifier. She also testified that her partner told her that the partner could smell mould.

Analysis

Firstly, with respect to the notice to end the tenancy, the landlord has not provided me with any evidence or testimony with respect to how or when it was served on the tenant. The tenant testified that it was personally served, and I accept that but I have no idea of what date. That is important because the *Act* requires a tenant to pay the rent in full or dispute the notice within 5 days of receipt. If the tenant pays the rent in full within that 5 days, the notice is of no effect. The tenant testified that he paid the \$5.00 in unpaid rent around the end of January, 2015 and the landlord testified that it was on February 1, 2015. Without knowing the date that the tenant was served or the date that the tenant

paid the \$5.00, I cannot be satisfied that the tenant didn't pay the rent on time. The notice also claims unpaid utilities, however the *Act* specifies that unpaid utilities can be treated as unpaid rent 30 days after the tenant is given written demand for the payment. In this case, the landlord testified that she gave the tenant the bills and a calculation about a week before giving the notice to end the tenancy. The tenant disagrees. The onus is on the landlord to establish that the tenant was given a written demand 30 days prior to issuing the notice in order for the notice to be effective. The landlord has not proven that. I hereby cancel the 10 Day Notice to End Tenancy for Unpaid rent or Utilities issued on January 26, 2015 and the tenancy continues.

With respect to the tenant's monetary claim, the *Act* permits a person to make such a claim if the opposing party has breached the *Act* or the tenancy agreement and that damages have resulted. In order to be successful in such a claim, the onus is on the tenant to establish the 4-part test for damages:

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 tenant made to mitigate, or reduce such damage or loss.

In this case, the parties have not disagreed that the rodent issue has been a problem since the beginning of the tenancy in September, 2014. The landlord testified that the tenant likely let them in during the move-in. The tenant testified that previous holes under the cupboard in the kitchen have been filled, another exists, and the rotted wood is soft which allows the rodents to chew their way in. The parties also agree that the cupboard needs to be pulled out and repairs made to prevent future entry. The landlord has known about the rodents since the beginning of the tenancy and relied on the tenant to pull out the cupboard. Neither party has provided any evidence of when the tenant advised the landlord that he couldn't do it, however, the *Act* states that it is a landlord's responsibility, not a tenant's. The landlord ought to have found out immediately and if the tenant didn't offer that information, the landlord ought to have asked. I also find that the landlord's failure to deal with it is particularly aggravated by the fact that it's been an issue for 5 months and the tenant has a baby residing in the rental unit.

With respect to the mould, the tenant has not provided any evidence to me or to the landlord other than asking the landlord if she could smell mould in the rental unit.

In the circumstances, I find that the tenant has established that the tenant's family has suffered damages by having to live with rodents in the kitchen and other areas of the

rental unit, and that the damages suffered are a result of the landlord's failure to maintain the rental unit in accordance with the *Residential Tenancy Act*. I further find that the tenant has established that he has done what he could to mitigate the damages suffered by notifying the landlord and cooperating with pest control personnel. With respect to the amount, I find the tenant's claim of \$3,000.00 is not excessive, I am satisfied that the tenant has established aggravated damages in the amount of \$3,000.00, and I order that the tenant be permitted to deduct that amount from future rent or may otherwise recover it.

The *Residential Tenancy Act* defines emergency repairs as repairs that are:

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

In this case, I am satisfied that the rodent issue is urgent and necessary for the health or safety of the tenants, and I order the landlord to have the cupboards removed and boards and other materials replaced as required by a qualified contractor immediately. If the repair is not made prior to the end of February, 2015, the tenant will be permitted to reduce rent by \$600.00 for the month of March, 2015.

I further order the landlord to thoroughly investigate mould issues or excessive moisture issues and if required, retain the services of a qualified contractor to make the repairs necessary to prevent mould build-up in the rental unit.

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 26, 2015 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,000.00. This amount may be deducted from future rent payable or otherwise recovered.

I hereby order the landlord to have the cupboards removed and boards and other materials replaced as required by a qualified contractor immediately. If the repair is not made prior to the end of February, 2015, the tenant will be permitted to reduce rent by \$600.00 for the month of March, 2015.

I hereby order the landlord to thoroughly investigate mould issues or excessive moisture issues and retain the services of a qualified contractor to make the repairs necessary to prevent mould build-up in the rental unit.

These orders are 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: February 19, 2015

Residential Tenancy Branch

