Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD, MNDC, MNR FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for the return of the security deposit under the Act and a rent abatement for the final month of the tenancy. The hearing was also convened to hear a cross application by the landlord for a monetary order for rent owed, cleaning costs and compensation for missing property.

Both the landlord and tenant were present and gave testimony in turn.

Issues to be Decided for the Tenant's Application

The tenant was seeking to receive a monetary order for the return of the security deposit and compensation. The issue to be determined based on the testimony and the evidence is whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act and whether the tenant is entitled to a rent abatement.

Issues to be Decided for the Landlord's Application

The landlord was seeking to receive a monetary order for rent owed and compensation for loss of rent, cleaning and replacement of a heater.

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled to monetary compensation under section 67 of the *Act*. This determination depends upon answers to the following questions:
    - Has the landlord submitted proof that the rental amount being claimed is validly owed by the tenant to this landlord?
    - Has the landlord submitted proof that the claim for damages or loss is supported pursuant to *section 7* and *section 67* of the Act by establishing on a that the costs were incurred due to the actions of the tenant that contravened the Act or agreement?

- Has the landlord proven that the amount or value being claimed is justified?

The tenant has the burden of proof to establish that the deposit existed. The landlord has the burden of proof to show that compensation for damages and losses is justified.

Background and Evidence

The tenancy began on November 1, 2009 and current rent was at $980.00 per month plus 125.00 utilities and HD Cable. A security deposit of $525.00 was paid of which $475.00 remained as $50.00 had been awarded to the landlord in a previous dispute resolution decision. The tenancy ended with an Order of possession awarded at the prior hearing and the tenant vacated at the end of December 2010.

The landlord stated that the tenant refused to pay rent for the final month of the tenancy and the landlord is seeking $1,119.40 for December 2010. The landlord testified that during December the police attended more than once and one of the tenants was subject to a no-contact order with the landlord. The landlord testified that although no move-in condition inspection report was completed, a move-out condition inspection report was done in the tenant's absence and the unit was found to be not reasonably clean. The landlord submitted copies of the inspection and photos. The landlord was claiming costs of cleaning and carpet cleaning and provided receipts for the work done.

The tenant testified that, at the end of the tenancy, the landlord impeded the tenant's efforts to clean the unit by locking the gate, bothering the tenant, calling police, turning off the power and turning off the water to the unit. The tenant stated that no effort was made by the landlord to schedule a move-out inspection.

With respect to the rent for December, the tenant acknowledged that they failed to pay the rent on December 1, 2010. However, the tenant is seeking a retroactive rent abatement for the entire month due to the fact that the tenant was not able to reside in the unit for any significant period during the month of December 2010. The tenant testified that the landlord intermittently deprived the tenant of electrical power and on one occasion when the tenant contacted the landlord to complain, the landlord stated that she was refusing to restore the power. The tenant testified that the landlord had locked the tenant out of the property and they required police intervention to access the unit, which still contained some of the tenant's possessions. The tenant stated that the landlord also turned off the water and he was not able to shower. The tenant testified that, as matters deteriorated, there was a physical confrontation involving the landlord's son. According to the tenant, these issues and strained relations with the landlord forced the tenant to stay elsewhere for most of the month of December until their possessions could be moved to another residence around December 26th. 2010

The landlord disputed that the power was ever intentionally turned off and stated that only portions of the rental unit were ever without power. The landlord denied turning off the water to the suite and stated that the tenant's conduct was the reason for the police intervention and the subsequent no contact order. The landlord stated that the tenant's insistence in remaining during the month of December was merely to harass the landlord and try to force them to return the tenant's security deposit despite the fact that no rent was paid for December 2010.

Analysis – Landlord's Monetary Claim

In regard to the cleaning costs being claimed by the landlord, an Applicant's right to claim damages from another party is covered by section 7 of the Act which states that if a landlord or tenant fails to comply with the Act, the regulations or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a Dispute Resolution Officer authority to determine the amount and order payment under the circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord.

I find that the tenant's role in liability for compensation could have best been established with a comparison of the unit's condition before the tenancy began with the condition of the unit after the tenancy ended. In other words, through evidence using move-in and move-out condition inspection reports containing both parties signatures.

Section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys or other means of access that are in the

possession or control of the tenant and that allow access to and within the residential property.

Section 23(3) of the Act covering move-in inspections and section 35 of the Act for the move-out inspections state that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. The Act places the obligation on the landlord to complete the condition inspection report in accordance with the regulations and the landlord and tenant must each sign the condition inspection report, after which the landlord must give the tenant a copy of that report in accordance with the regulations. Part 3 of the Regulations goes into significant detail about the specific obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspections and Reports must be conducted.

In this instance, I find that the landlord admitted that neither a move-in condition inspection report nor move-out condition inspection report was completed with participation by the tenant and I find the failure to comply with sections 23 and 35 of the Act has hindered the landlord's ability to establish what damages were caused by the tenant.

I accept that the unit was not let reasonably clean by the tenant. I also accept the tenant's testimony that they were not given adequate opportunity to complete the cleaning of the unit due to ongoing issues with the relationship and restricted access to the unit.

With respect to the missing heater, the landlord did not supply adequate proof that it existed and was part of the tenancy nor that the tenant had removed it. For the reasons above I find that the landlord's monetary claims for cleaning and loss fail to sufficiently meet the test for damages and loss.

With respect to the rent owed for December, 2010, I find that section 26 of the Act clearly states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. In this instance the tenant owed rent on December 1, 2010 and the rent was unpaid. I find that the tenant would be obligated to pay the rent of $980.00 and utilities of $125.00 under the tenancy agreement signed by the parties. I find that the tenant did not pay the rent when rent was due and the landlord would be entitled to be compensated in the amount of $1,105.00

Analysis: Tenant's Application

With respect to to the return of the security deposit and pet damage deposit, I find that section 38 of the Act states that within 15 days after the later of the day the tenancy

ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or pet damage deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit. In this instance, the landlord seeks to keep the deposit and made an application to do so within the required 15 days from the end of the tenancy.

Pursuant to the Act, he tenant is credited with a deposit remaining of $475.00 as these funds are held in trust for the tenant. The deposit will be applied against a debt or monetary award, if any granted to the landlord should the landlord's claim succeed.

With respect to the portion of the tenant's application seeking a rent abatement for the month of December, 2010, I find the following sections of the Act to be relevant.

Section 28 of the Act protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

> (a) reasonable privacy;
>
> (b) freedom from unreasonable disturbance;
>
> (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
>
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 27 of the Act states that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or if providing the service or facility is a material term of the tenancy agreement.

Section 30 of the Act states that a landlord must not unreasonably restrict access to residential property by

(a) the tenant of a rental unit that is part of the residential property, or

(b) a person permitted on the residential property by that tenant.

With respect to this tenancy, I find that during the month of December, the tenant was not able to reside in the suite in the manner expected by a tenant.

While I acknowledge that the tenant had violated the Act by not paying rent for the period in question, the landlord would still not be permitted to interfere with the tenancy rights, particularly if the landlord intended to pursue payment of the rent owed for

December through dispute resolution later on. I find as a fact that the tenant did not have free use of, and access to, the all aspects of the rental unit for at least a portion of the month, and I find that by the end of the month the tenancy had altogether disintegrated into a fracas with police intervention, a "no contact order" and mutual allegations of harassment and even assault.

I find that a rent and utility abatement to the tenant for the entire month of December is warranted under these circumstances. Accordingly, I find that the $1,105.00 rent and utilities owed to the landlord under the Act is offset by the $1,105.00 rent and utility abatement granted in favour of the tenant.

With respect to the security deposit, given that the landlord's claim for cleaning costs and loss of the heater were dismissed, I find that the tenant is still owed a refund of $475.00.

Conclusion

Based on the testimony and evidence I find that there is no rent owed to the landlord for December 2010 after being set off with the rent abatement granted to the tenant for the same period.

I hereby grant a monetary order in favour of the tenant for $525.00 comprised of the remaining security deposit of $475.00 and the $50.00 cost of the application. This order must be served on the Respondent and may be filed in the Supreme Court, (Small Claims), and enforced as an order of that Court.

The remainder of both the landlord's and the tenant's applications are dismissed without leave to reapply.

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 2011.

Residential Tenancy Branch

DECISION

Dispute Codes OLC, RR, FF

Introduction

This hearing dealt with an application from the tenant to order the landlord to comply with the Act, allow a tenant to reduce rent for repairs and recovery of the filing fee. Both parties participated in the conference call hearing.

Issues to be Decided

Are the tenants entitled to any of the above under the Act.

Summary of Background and Evidence

The tenancy in unit 113 started in November 2002 and the tenants currently pay a monthly rent of $1532.00.

On August 16, 2010 the property management company advised the tenants in writing, that they were being given 6 months notice that all fencing would be removed. The fencing in question is the wood fence that defines the yards for the 16 ground floor units.

The tenants testified that the yard is not common property and that removal of the fence will greatly impact their privacy, use and quiet enjoyment of the yard and take away the tenant's ability to allow their young son to be in the yard. The tenants stated the reason that they moved from an upper unit to the lower unit was because the lower unit had a private fenced yard for the tenant's personal use.

The tenants stated that when they took possession of unit 113, the resident manager advised the tenants that the yard was for the tenant's use only and that the tenants were responsible for the upkeep of the yard area. The tenant's testified that the yard had never been used by or accessed by any other tenants in the building and that generally only utility company employees require access to the seven yards that have gates (reading meters, cable boxes etc.). The tenants stated that the resident manager has always provided notice per the Act before entering the tenant's yard. The tenants stated that the fence has been in place for the entire length of their tenancy which is 16 years and may have been there longer.

The tenants stated that the fence is a facility that is essential to their use of the rental unit and living accommodation as the tenants 5 year old son has serious medical conditions that prevent him from understanding boundaries, dangers and safety and the

tenants are extremely concerned that without the fence their young son will be a great risk. The tenants testified that the privately fenced yard is also used for their son's physical therapy and removing the fence would eliminate the tenant's ability to provide the much needed physical therapy for their son.

The landlord's agent testified that the yards are not common area and that removal of the fence would not be a hardship to the tenants as the tenants will still have the space available to them for their use. The landlord's agent stated that 7 of the 16 yards have a gate which other tenants could access these seven yards by.

The landlord's agent contends that as the yard space is not specifically noted on the tenancy agreement or addendum it therefore is not a material term of the tenancy agreement and the landlord has the right to remove the fence and replace it or not.

Law

Residential Tenancy Act **Definitions; "residential property"** means
(a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,
(b) the parcel or parcels on which the building, related group of buildings or common areas are located,
(c) the rental unit and common areas, and
(d) any other structure located on the parcel or parcels;

Residential Tenancy Act **Definitions; "tenancy agreement"** means
an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit;

Residential Tenancy Act **Section 27** Terminating or restricting services or facilities
(1) A landlord must not terminate or restrict a service or facility if
(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
(b) providing the service or facility is a material term of the tenancy agreement.

Residential Tenancy Act **Section 28 Protection of tenant's right to quiet enjoyment**
A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
(a) reasonable privacy;
(b) freedom from unreasonable disturbance;
(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];
(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy **Guideline 22 Termination or Restriction of a Service or Facility**

In a tenancy agreement, a landlord may provide or agree to provide services or facilities in addition to the premises which are rented. For example, an intercom entry system or shared laundry facilities may be provided as part of the tenancy agreement. A definition of services and facilities is included in the Residential Tenancy Act and the Manufactured Home Park Tenancy Act 1 (the Legislation).

A landlord must not:

- *terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or*
- *terminate or restrict a service or facility*

An "essential" service or facility is one which is necessary, indispensable, or fundamental. In considering whether a service or facility is "essential" to the tenant's use of the rental unit as living accommodation or use of the manufactured home site as a site for a manufactured home, the arbitrator will hear evidence as to the importance of the service or facility and will determine whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the rental unit as living accommodation. For example, an elevator in a multi-storey apartment building would be considered an essential service.

In determining whether a service or facility is essential, or whether provision of that service or facility is a material term of a tenancy agreement, an arbitrator will also consider whether the tenant can obtain a reasonable substitute for that service or facility. For example, if the landlord has been providing basic cablevision as part of a tenancy agreement, it may not be considered essential, and the landlord may not have breached a material term of the agreement, if the tenant can obtain a comparable service.

Analysis

Based on the documentary evidence and undisputed testimony of both parties, I find on a balance of probabilities that the tenant has met the burden of proving that the fence is a facility that is essential IE: *necessary, indispensable, or fundamental*, to the tenant's use of the rental unit as living accommodation. As I have determined the fence to be a facility that is essential, the tenant's request for a rent reduction for services or facilities not provided is hereby dismissed.

Therefore should the landlord remove this essential facility IE the fence, it would be in direct contravention of the Act.

As the tenant's have been successful in their application they are entitled to recovery of the $50.00 filing fee.

Conclusion

The fence has been determined to be an essential facility and removal of this essential facility would be in direct contravention of the Act.

I further find that the tenant's are entitled to recovery of the $50.00 filing fee and the tenant's may recover this amount by withholding $50.00 from the February 2011 rent. The tenant's request for a rent reduction for services or facilities not provided is dismissed.

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: January 19, 2011

Residential Tenancy Branch

DECISION

Dispute Codes MNDC, OLC, RP, PSF

Introduction

This hearing dealt with an application by the tenants for money owed or compensation due to damage or loss, for the landlord to comply with the Act, for the landlord to make repairs and for the landlord to provide services or facilities.

Both parties participated in the conference call hearing.

Issue(s) to be Decided

Are the tenants entitled to any of the above under the Act.

Background and Evidence

This tenancy began April1, 2008 with monthly rent of $1650.00 and the tenants paid a security deposit of $825.00.

The tenants testified that during their tenancy there have been numerous issues that they have had to contend with that have significantly reduced their peace and quiet enjoyment of the rental unit. The tenants stated that there have been issues with the elevators in the building, a lack of water and hot water, repeated floods in the building, excessive noise from fans on the roof, poor air circulation, noise from construction and second hand smoke.

Floods & Stained Carpet

The tenants stated that during their tenancy there have been at least 4 floods in the building and they believe that because of the floods, there is likely mold in the walls. The tenants stated that when they moved in they had to vacate the rental unit for 2 weeks as there had been a flood and their rental unit had been affected. The tenants stated that the carpet in their rental unit is 14 years old and has been damaged by the floods and that now, even with professional cleaning the carpets will not come clean. The tenants stated that there are black marks that cannot be cleaned off the bottom of the tub and they believe the black marks are mold and a caused by the floods. The tenants also maintain that there are black marks on the walls which they believe to be mold. The tenants have tried to clean the black marks with various cleaning products to no avail. The tenants stated that they had a city inspector come in and check the walls and carpet but they have not brought in a professional to verify if the marks on the carpets, walls or tub are in fact mold and the tenants believe that this should be the

landlord's responsibility. The tenants stated that the city inspector had advised them that a special paint should be use on the walls to stop any mold from coming through.

The landlord stated that there had been a flood on the 10th floor and water leaked down to the main floor but that a restoration company had been brought in to place drying equipment throughout the building. The landlord stated that she and her handyman inspected the tub and carpet and determined that the marks are a result of normal wear and tear and not a result of flooding. The landlord commented that the marks on the carpet are in a high traffic area and the bottom of a tub will get dirty and that this is not something that a landlord would be responsible for. The landlord also stated that her handyman provided a new cleaner to the tenants for the tub. The landlord stated that the city inspector had contacted her, advised her that there was no evidence of mold and that there would not be any further investigation by the city.

The landlord did acknowledge that the carpet in the rental unit is over 14 years old and thought to be in reasonable condition and only stained in the high traffic areas. The tenant stated that the move in condition inspection report does note a number of stains on the carpet.

The tenants commented that they had tried the new cleaner provide by the landlord and that it did help to remove the black stains but that the bottom of the tub still gets dirty. The tenants also commented that they typically used the shower in the other bathroom because of the black marks in the bottom of the bath tub.

Hot Water

The tenants stated that for an entire year the water in the building was only warm and not hot and that they had to 'run the taps' for 2 to 5 minutes to get warmer water. The tenants stated that for the first 2 years of the tenancy they had hot water and it was after the pipes were continually bursting that they started to have problems. The tenants stated that notices have repeatedly been posted advising tenants that the water will be shut off due to the renovations in the building however on one occasion the water was off for 4 days without notice to the tenants.

The landlord responded by stating that the 4 days water shut off was due to a pipe breaking and as that was out of the landlord's control, there had been no way to inform the tenants of the issue. The landlord stated that any other times that the water was shut off that notice was provided and this disruption in service had been to the going renovations in the building and again, this was out of the landlord's control. The landlord stated that the strata had been working on the issue of the broken pipes and lack of hot water and it had been a frustrating process for the landlord and tenants. The landlord stated that during her recent inspection of the rental unit that the water had to be run for a minute or so but that it did get hot.

Elevators

The tenants stated that the elevators frequently break down resulting in the tenant to have to walk up the stairs which makes the tenant ill. The tenants stated that the

elevators were out of service January 4-6, 2012, January 14-15, 2012 in addition to some ½ days, 4 days in May 2012 and that there was typically only 1 elevator working in January 2012. The tenants did acknowledge that typically only one of the two elevators was ever out of service at one time but that the working elevator was often being used by construction staff. The tenants stated that the elevator is also used to move tenants in and out of the building and if only one of the two elevators was working, tenants sometimes had to wait up to an hour for access as the elevator would be locked.

The landlord stated that she had spoken to the building manager a number of times about the elevators and was always advised that the issue was being addressed. The landlord commented that apart from contacting the strata and building manager that the issue of the elevators was out of the landlord's control.

Air Circulation

The tenants stated that there is poor air circulation in the building and their rental unit gets very stuffy. The tenants believe that there was no air circulation at all for 8 days in May 2012 and after contacting a city health inspector, the city health inspector directed the building manager to get the equipment fixed that same day.

The landlord stated that she has noticed the poor air circulation on her last trip to the building and had spoken to the building manager about the problem.

Fan Noise

The tenants stated that the fan on the roof of the building next door is very noisy and that when the fans come on the noise startles the tenants. The tenants stated that they specifically asked the landlord if the fans made noise when they viewed the rental unit and the landlord had advised them that to her knowledge they did not. The tenants maintained that the previous tenant and their neighbours had complained about the noise to the owner of the neighbouring building and that the city has ordered that building owner to complete repairs.

The landlord responded by stating that the fans are on the building next door and out of her control to do anything about. The landlord also stated that the previous tenant had been in the rental unit for 5 years and never complained about noise from the fans.

Construction

The tenants stated that all during the past year the building had undergone renovations and that there has been loud hammering and drilling. The tenants stated that the landlord had also never advised them that there was going to be major construction next door and across the street from their apartment building. The tenants stated that as one of them requires quiet in the rental unit to conduct a business, the construction noise has been very disruptive.

The landlord responded by stating that the building has undergone an extensive renovation to address any issues with the plumbing. The landlord also commented that they had absolutely no control over construction taking place either across the street or next door to the tenant's building. The landlord stated that at the start of the tenancy she was not aware of the plans for development on the sites in question and that there was nothing from the strata or in the strata minutes about upcoming development projects.

The tenants countered this testimony by stating that to their knowledge, all owners had been made aware of the neighbouring development projects 6 months prior to them being started which was prior to the start of the tenancy.

Second Hand Smoke

The tenants maintain that they believed the building to be non-smoking however in 2011 the tenants had to deal with second hand smoke in their rental unit from the neighbouring rental unit. The tenants stated that the issue of the smoke, which was marijuana smoke, went on for 8 months but has since been resolved as the tenants in question have either vacated or were evicted.

The landlord stated that the tenants did not ask of the building was no smoking however the tenants refuted this testimony and stated that when they inquired the landlord stated 'not as far as she was aware' was smoking allowed. The landlord stated that she has since checked with the building manager and found out that the building is designated as a no-smoking in the common areas however the individual units in the building are not designated as no smoking. The landlord stated that when the tenants advised them about the second hand smoke the landlord immediately contacted the strata to have the matter looked into.

Repairs

The tenants stated that they have made repeated requests for repairs and in some case the landlord responded very quickly, however in other instances there was no response. The tenants counsel referred to exhibit 'M' which is a list of items the tenants brought to the landlord's attention at the start of the tenancy in 2008. The tenants at this time are seeking to have the 14+ year old carpet replaced, have the rental unit re-painted and have the bath tub replaced. The tenants also believe that the landlords did not make a reasonable effort to minimize the disruptions that the tenants have suffered through.

The landlord responded by stating that the repairs being completed in the building are all necessary and not something the landlord has control over. The landlord stated that although the carpet in the rental unit is over 14 years old and has some stains which were there prior to the start of this tenancy, the carpet is acceptable.

The tenant commented that as of 2 months ago there is a new building manager who is committed to 'making all the wrongs right' and that this manager is very responsive to tenants concerns. The tenant stated that she has also been invited to meet with the new building manager to advise him of all the past and present problems as past strata

meeting minutes are missing pertinent information. The tenants stated that they would like to look for alternate housing but that it will take time to find suitable accommodations. The tenants also stated that they had come to this office over a year ago to get information on what to do but that they had found the process to be very confusing and were only able to move forward with their claim after receiving assistance.

The landlord stated that they felt the tenants did not have grounds for compensation or a rent reduction as many of the issues the tenant's brought forward were out of the landlord's control.

The tenants in this application are seeking $2950.00 compensation for a reduced value in the tenancy, loss of their peace and quiet enjoyment and anticipated moving expenses. The tenants are also seeking a rent reduction of $105.00 per month.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenants have met the burden of proving that they have grounds for entitlement to a monetary order for compensation due to damage or loss, services or facilities agreed to but not provided and a rent reduction.

Floods & Stained Carpet

It is recognized that while floods caused by burst pipes may be directly out of the landlord's control, consideration must be given to the fact that tenants have a right to freedom from unreasonable disturbance. For tenants to deal with repeated flooding and a lack of basic maintenance for an excessive amount of time is unreasonable therefore I will allow the tenants $200.00 claim for compensation in regards to the stained, 14 year old carpet. As there is no evidence to prove that there is mold in the rental unit, the landlord will not be ordered to have the rental unit inspected by a professional however the tenants are at liberty to do so at their own expense.

Residential Tenancy Policy Guideline 40 Useful Life of Building Elements notes the useful life of a carpet to be 10 years and **I hereby order that the 14+ year old carpet in the rental unit be replaced at the landlord's expense no later than October 1, 2012.** If the carpet is not replaced by October 1, 2012 the tenants will be entitled to a rent reduction of $50.00 per month until such time as the carpet is replaced with minimal disruption to the tenants.

I am not completely satisfied that the bath tub is permanently stained as the tenants stated that the bottom of the bath tub was better after they had used the cleaner provided by the landlord. It is also not known if the protective coating on the fibreglass bath tub has since been scratched by the tenant's efforts to scrub the black marks out. The marks on the bottom of the bath tub do not in any way hinder the use of the bath tub and it would seem that it is more of an aesthetic issue for the tenants. That said, the

tenants may want to consider purchasing a bath mat for this area of the bath tub to help keep it clean and to cover the black marks.

Residential Tenancy Policy Guideline 40 Useful Life of Building Elements notes the useful life of interior paint to be 4 years and **I hereby order that the entire rental unit be re-painted at the landlord's expense no later than November 1, 2012.** If the entire rental unit is not re-painted by November 1, 2012 the tenants will be entitled to a rent reduction of $50.00 per month until such time as the entire rental unit is re-painted with minimal disruption to the tenants.

Hot Water

In regards to the tenant's request for $250.00 compensation for a lack of hot water, I find that the tenant's are entitled to this amount. It is recognized that a lack of or an inconsistent supply of hot water may be directly out of the landlord's control, consideration must be given to the fact that tenants have a right to this very basic service or facility. I do not allow a future rent reduction in this regard however if a lack of hot water creates problems for the tenants in the future, the tenants are at liberty to return to this office an file for compensation.

Elevators

In regards to the tenant's request for $175.00 compensation for elevator breakdowns, I find that the tenant's are entitled to this amount. It is recognized that the repeated elevator breakdowns may be directly out of the landlord's control, however consideration must be given to the fact that tenants have a right to this very basic service or facility. As the elevators are currently in working order I do not find that the tenants are entitled to a future rent reduction in this regard however if repeated elevator breakdowns create problems for the tenants in the future, the tenants are at liberty to return to this office an file for compensation.

Air Circulation

In regards to the tenant's request for $175.00 compensation for poor air circulation, I find that the tenant's are entitled to the limited amount of $75.00 amount. Documentation in this regard is minimal at best with the main complaint about poor air circulation being the 12 days in May 2012. As repairs have been made to the equipment that caused the problem and the matter at this time is resolved, I do not find that the tenants are entitled to a future rent reduction in this regard however if poor air circulation creates problems for the tenants in the future, the tenants are at liberty to return to this office an file for compensation.

Fan Noise

In regards to the noise from the fans on the roof of the neighbouring building, I find that the tenants are not entitled to their $225.00 claim. I accept the landlord's testimony that she did not know that the fan on the adjacent building was problematic and that she had ever been made aware of the issue. It also appears that many of the complaining tenants have complained to the owners of the building i question and not their respective individual landlords. I also do not find it reasonable to hold the landlord

responsible for a concern not related to the building that the rental unit is located in. Therefore this portion of the tenant's claim is dismissed without leave to reapply.

Construction

In regards to the tenant's request for $225.00 compensation for disruption of their peace and quiet enjoyment I find that the tenant's are entitled to this amount due to the on-going construction in the tenant's building. I accept the landlord's testimony that she did not have knowledge of the up-coming construction projects in the neighbourhood and therefore do not however find it reasonable to hold the landlord responsible for outside construction noise.

Second Hand Smoke

In regards to the $200.00 claim for the tenant's peace and quiet enjoyment being disturbed by second hand smoke, I find that when the tenant's brought their concern to the landlord, the landlord contacted the strata to see what could be done. As the landlord responded in a timely manner, I find that the tenants are not entitled to any compensation. It must also be considered that in this circumstance, unlike that in the judicial review submitted into evidence, the landlord had no control over who occupied the rental unit in question and that when the landlord was made aware of the second hand smoke they immediately contacted the strata to address the concern.

Anticipated Moving Expenses

The tenants in this hearing stated that they would consider moving, would like to move and that it would take time for them to find suitable accommodations. And while the tenants seek $1500.00 for moving expenses in this application, I am not satisfied that the tenancy will in fact be coming to an end and I find it punitive to have the landlord pay this amount. Therefore the tenant's request for $1500.00 in anticipated moving expenses is dismissed without leave to reapply.

Accordingly I find that the tenants are entitled to a monetary order for $925.00 for the following:

- $200.00 compensation for the stained, 14 year old carpet
- $250.00 compensation for a lack of hot water, lack of water
- $175.00 compensation for repeated elevator breakdowns
- $75.00 compensation for poor air circulation
- $225.00 compensation for disruption of their peace and quiet enjoyment due to the on-going repairs and lack of services or facilities.

As the tenants have been successful in their application the tenants are entitled to recovery of the $50.00 filing fee.

Conclusion

I find that the tenants have established a monetary claim for $925.00 for compensation due to damage or loss and services or facilities agreed to but not provided. The tenant is also entitled to recovery of the $50.00 filing fee.

The tenants may deduct $975.00 one time, from future rent owed to the landlord for recovery of the monetary award and filing fee paid to bring their application forward.

I hereby order that the 14+ year old carpet in the rental unit be replaced at the landlord's expense no later than October 1, 2012. If the carpet is not replaced by October 1, 2012 the tenants will be entitled to a rent reduction of $50.00 per month until such time as the carpet is replaced with minimal disruption to the tenants.

I hereby order that the entire rental unit be re-painted at the landlord's expense no later than November 1, 2012. If the entire rental unit is not re-painted by November 1, 2012 the tenants will be entitled to a rent reduction of $50.00 per month until such time as the entire rental unit is re-painted with minimal disruption to the tenants.

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: July 3, 2012

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: MNSD, RP, LRE, AAT, LAT, RR
For the landlord: OPR, MNR, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for an order requiring the landlord to make repairs to the rental unit, for an order allowing a reduction in rent, a monetary order for money owed or compensation for damage or loss, an order authorizing the tenant to change the locks to the rental unit, an order requiring the landlord to allow access to the rental unit and an order suspending or setting conditions of the landlord's right to enter the rental unit.

The landlord applied for order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are referred to in this decision.

Issue(s) to be Decided

Is the tenant entitled to orders for the landlord and a monetary order?

Is the landlord entitled to an order of possession due to unpaid rent, a monetary order for unpaid rent and to recover the filing fee?

Background and Evidence

There is no written tenancy agreement. I heard undisputed testimony that this tenancy began on November 1, 2011, monthly rent is $750.00, due on the first day of the month, and the tenant paid a security deposit of $350.00 at the beginning of the tenancy.

The rental unit was in the lower suite, and the landlord and his family lived in the upper suite.

Pursuant to the Residential Tenancy Branch Rules of Procedure, the landlord proceeded first in the hearing in support of his 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice").

Landlord's application-The landlord gave evidence that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent on August 1, 2012. The landlord gave conflicting evidence of the method of service of the document; the application stated that the Notice was delivered by hand and the written evidence shows that the Notice was posted on the door.

The Notice stated the amount of unpaid rent as of August 1, 2012 was $2670.00. This represents the amount of the landlord's monetary claim. The effective vacancy date was August 1, 2012.

The landlord said that the amount listed included unpaid rent of $420.00 for May, and $750.00 for June, July and August 2012, each.

When questioned, the landlord acknowledged that the tenant paid rent in cash and that he did not issue receipts for the cash payments. The landlord contended that the tenant never wanted a receipt.

I questioned the landlord's agent further about a method of record keeping, and the agent said that the rent funds were never deposited in the bank, but rather were used to pay bills. The landlord agreed that he did not have an accounting system or written records of payments.

Tenant's response-The tenant denied receiving the Notice, saying it was not posted on her door or handed to her. Additionally, the tenant said that all her rent payments were paid; however the landlord refused to give her receipts for payments despite making

repeated requests. The tenant also said that the landlord demanded cash payments and would not accept cheques.

Tenant's application-The tenant's monetary claim is in the amount of $200.00, for loss of cable service. The tenant said that cable was provided for in the tenancy agreement and that the landlord terminated that service, the value for which she estimated to be approximately $200.00. The tenant stated that she now has satellite service.

As to the tenant's requests for orders for the landlord, the tenant stated the landlord has constantly harassed her and her children, to the point of police involvement, that the landlord and his wife have entered the rental unit without notice and when her son was home alone, and that the landlord has assaulted her ex-husband.

The tenant also contended that the landlord has blocked her and her son's access to the rental unit, requiring that the tenant call the police.

The tenant also contended that the toilet does not work properly and that the landlord and his family use the tenant's garbage bin.

When questioned, the tenant acknowledged not having issued written notices or requests to the landlord addressing her issues.

Landlord's response-The landlord denied entering the rental unit; rather the breaker to the home, located in the rental unit, was malfunctioning and the tenant refused entry.

The landlord said the tenant was the one who harassed the landlord, who is handicapped.

The landlord said that the tenant has allowed multiple unknown occupants in the rental unit and is a threat to the landlord's family.

When questioned, likewise the landlord acknowledged that no written notices have been issued to the tenant.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Landlord's application-

Order of Possession-If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. In the circumstances before me, I find the landlord's Notice to be deficient and therefore unenforceable. In reaching this conclusion, I find the landlord submitted insufficient evidence that the Notice was delivered to the tenant and likewise, I find the landlord submitted insufficient evidence that the amount listed on the Notice was valid.

The landlord does not keep any accounting records nor does he issue receipts for cash payments, in violation of the Act. The tenant said that she has paid her rent in full and that the landlord refused to give her receipts.

In this case the landlord has the onus of proving, during these proceedings, that the claim is justified. When the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will not likely prevail.

Therefore, I find the 10 Day Notice to End Tenancy dated August 1, 2012, is not valid, not supported by the evidence and is of no force or effect and I hereby **dismiss** the landlord's application for an order of possession, with the effect that this tenancy continue until it otherwise ends under the Act.

I also find the landlord submitted insufficient evidence that the tenant has not paid rent and I therefore dismiss his request for a monetary order, without leave to reapply.

I also decline to award the landlord recovery of the filing fee.

Tenant's application- In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the tenant in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

I find the tenant submitted insufficient evidence that she suffered a loss of cable service. I also find the tenant submitted insufficient evidence that the landlord harassed her, entered her rental unit, or has not made repairs.

In reaching this conclusion, I was influenced by the lack of documentary evidence. Both parties referred to police reports, yet neither party submitted any such report. I also was not provided any written notices or requests to the landlord.

If there are repairs required or if the landlord is otherwise failing to address his obligation under the Act, a tenant's remedy is to write to the landlord and advise of the required repairs or concerns. If so, there is clear evidence of what repairs and issues are required and the date on which the landlord was advised of such repairs or issues. If, after a reasonable amount of time, the repairs are not completed or the issues addressed, then the tenant's remedy is to file an Application for Dispute Resolution seeking remedy.

Due to the insufficient evidence, I find the tenant has submitted insufficient evidence to support her application and I therefore dismiss her application for orders for the landlord.

Conclusion

Due to the above, I dismiss the landlord's application, without leave to reapply.

Due to the above, I dismiss the tenant's application, without leave to reapply.

I remind each party that they have rights as well as obligations under the Residential Tenancy Act and should the parties have questions about such rights or obligations, they are advised that the legislation is available on the Residential Tenancy Branch website as well as information officers being available to assist with understanding the legislation.

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: September 18, 2012.

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNDC, OLC, PSF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; an Order compelling the landlord to comply with the Act and an order to compel the landlord to provide services or facilities agreed upon Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

.Issue(s) to be Decided

- The issues to be determined based on the testimony and the evidence are a) Whether the landlord should be ordered to comply with the Act or agreement and restore services or facilities withheld and b) Whether the tenant is entitled to monetary compensation or a rent abatement under section 67 of the *Act* due to a loss of value of the tenancy because the landlord withheld a service.

Background and Evidence

The tenancy began on April 1, 2009 with rent set at $ 800.00. Both parties agreed that when the tenancy began the tenant was provided with cablevision/satellite services and received all of the movie channels. Both parties agreed that approximately 3 months ago the number of channels was suddenly reduced. The tenant finds this to be a breach of the agreement and seeking to have services restored and compensation for the loss.

The landlord testified that he does provide basic satellite services, valued at $61.00 per month. However, tenants were permitted an option of upgrading to additional channels provided that the tenant paid for the enhanced level. The landlord testified that another occupant in the complex had agreed to supplement the channels and as a result, everyone enjoyed the benefit of $99.00 worth of services. However, once the other resident ceased paying for the extra channels, the service was reduced for all. The landlord stated that this was the understanding from the outset. The landlord's position was that the extra satellite channels were contingent upon another resident and were never guaranteed by the landlord and thus were subject to change without notice.

Analysis

Section 14 of the Act states that a tenancy agreement may not be amended to change or remove a standard term. However, an agreement may be amended to add, remove or change a term, other than a standard term, but only if both the landlord and tenant agree to the amendment.

Section 27 of the Act states that a landlord must not terminate or restrict an essential service or facility or a service or facility that is considered to be a material term of the tenancy agreement. In some cases a landlord may terminate or restrict a non-essential service after giving 30 days' written notice in the approved form. In addition, the landlord must also reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

In this instance, I find that the landlord had made a commitment since the beginning of the tenancy to provide a certain level of satellite service included in the rent. Under the Act, this can be reduced, but the tenant would have to receive formal notice and a reduction in rent in the value of the service being discontinued.

Section 65(1) states that if it is found that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may order that past rent must

be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement. I find that justifying a past rent reduction, could be supported by proving both: a) that the value of the tenancy was reduced and; b) that the landlord has not complied with the Act or agreement.. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I However, the landlord has committed to restore the service to its previous level. Therefore, I find that the matter has been successfully resolved by cooperation between the parties. In regards to the past loss of service, I find that the tenant is entitled to be compensated and the parties have settled on a compromise of $60.00 in compensation. The tenant is permitted to reduce the next rent payment by this amount as a one-time abatement.

Conclusion

Given the above, and based on the testimony and evidence, I find that the tenant is entitled to receive monetary compensation under the Act in the amount of $60.00 and I hereby order that the tenant may reduce the next month rental payment by $60.00 as a one-time abatement. The landlord is ordered to restore the previous level of services as soon as possible.

The remainder of the tenant's application is dismissed without leave.

March 2010

Date of Decision

Dispute Resolution Officer

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNDC, OLC, PSF, ERP, CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a purported One-Month Notice to End Tenancy apparently for landlord use, a monetary order for money owed or compensation for damage or loss under the Act or tenancy agreement; an abatement in rent for repairs or services not provided, an Order compelling the landlord to comply with the Act, an order to compel the landlord to provide services or facilities agreed upon, and an order to force the landlord to complete repairs and emergency repairs.

Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

Issue(s) to be Decided

- The issues to be determined based on the testimony and the evidence are a) Whether the One-Month Notice to End Tenancy should be canceled; b) Whether the tenant is entitled to monetary compensation or a rent abatement under section 67 of the *Act* due to a loss of value of the tenancy because the landlord withheld a service or failed to do repairs; c) Whether the landlord should be ordered to comply with the Act by restoring services or facilities withheld and completing repairs.

Preliminary Matter

A One-Month Notice was submitted into evidence dated January 24, 2010 which purported to be effective on February 28, 2010. The landlord testified that the Notice

was served to the tenant in person on February 18, 2010. The Notice indicated that it was issued for repeated late payment of rent and because the tenant had caused extraordinary damage to the rental unit. However, the landlord testified that it was seeking to terminate the tenancy for landlord's use as a close relative would be occupying the unit, and had issued a letter to the tenant dated January 24, 2010 stating this. The tenant was requesting that the One-Month Notice be cancelled. It became evident that the intention of the landlord was to issue a Notice to End Tenancy for Landlord Use, which would have to be a Two-Month Notice under section 49 of the Act. Section 52 requires that the Notice be on the approved form. Therefore, I find that the One-Month Notice dated January 24, 2010 is cancelled. The landlord is at liberty to issue the intended Two-Month notice on the correct form in compliance with the Act.

Background and Evidence

The tenancy began on July 1, 2009 with rent set at $ 575.00 and a deposit of $300.00 was paid. No written tenancy agreement was signed. The tenant testified that Indian cable, laundry and parking were included in the tenancy but the tenant found that there was no on-site parking, only street parking and the laundry services were sudden withheld in mid-February 2010. The tenant stated that because of the lack of parking, they were forced to sell one of their two cars at a loss of $1,500.00 which was part of the claim for compensation being sought from the landlord. The tenant testified that the heat was deficient and they had to purchase a space heater at a cost of $61.99 which is also being claimed. The tenant testified that the landlord unsuccessfully attempted to raise the rent by $25.00 and did not complete repairs when requested. The tenant pointed out that they had to buy a shower curtain to replace shower enclosure door.

The tenant testified that the landlord's failure to complete repairs caused an incident in which the tenant was injured. According to the tenant, in January 2010 the tenant had asked the landlord to repair a bi-fold door in the closet and the landlord did not respond. On February 20, 2010 the closet door, which was leaning against the wall fell onto the tenant striking her shoulder and head. The tenant testified that when she went to the

doctor on February 22, 2010, it was confirmed that she had a bump on the head and she was prescribed antibiotics. The tenant testified that she was scheduled to go on a trip on February 24 to February 27, 2010 and due to the bump on her head was unable to enjoy the vacation thereby wasting approximately $600.00 on the tickets and a further loss of time off work valued at $336.00 as well as her daughter's time off work worth $226.00. The tenant is claiming compensation from the landlord for these amounts.

The tenant stated that after the door fell on her, she also felt pain on the right side of her mouth. Her teeth were xrayed when she went to the dentist on March 3, 2010 and it was found that a tooth had broken and had apparently become septic thereby requiring a root canal at a cost of $464.00 and a cap estimated at $2,000.00. The tenant is claiming compensation for these expenditures from the landlord.

In addition to the above, the tenant is claiming $500.00 moving costs and the return of the $300.00 security deposit. The tenant also expressed a concern that the landlord was not depositing the tenant's cheques in a timely manner and then alleging that the tenant had paid late for the purpose of justifying an eviction for cause.

The landlord agreed to reimburse the tenant for the space heater on the condition that it now would belong to the landlord. In regards to the inclusion of laundry in the tenancy, the landlord testified that the tenant was permitted access to laundry and to storage in the garage as a courtesy, rather than a feature of the tenancy. However, the landlord stated that they are willing to restore access to the laundry so that the tenant can use the machines each Saturday. In regards to the provision of on-site parking, the landlord testified that, whatever the tenant may have otherwise presumed, the tenancy only offered street parking. The driveway was reserved for the use of the landlord alone. The landlord testified that the tenant may have been seeking parking for customers who visited the tenant for hair cutting and styling services. The landlord disputed the tenant's claim for compensation for the loss of $1,500.00 incurred by having to sell one of the cars.

In regards to the tenant's claim that the landlord neglected to repair the closet door, the landlord disputed that the expenses being claimed by the tenant were caused by the landlord. The landlord testified that the tenant had only informed the landlord of the broken door on February 19th and the landlord had it repaired without delay. The landlord submitted an invoice dated March 2, 2010 showing that the door was repaired.

In answer to the tenant's concern that the landlord was delaying depositing the rent cheques, the landlord agreed to issue receipts for all payments at the time of the payment.

Analysis

In regards to an Applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.

4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the tenant, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence to verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant made a reasonable attempt to mitigate the damage or losses that were incurred

On the question of whether or not there was a violation of the Act by the landlord, I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

In this instance, a landlord would be in violation of the Act if the landlord was advised of the repair issue and refused to fix it within a reasonable period of time.

I find that, there was a broken door, but the landlord did take steps to repair it. However, even if I found that the landlord had not complied with the Act, the tenant would have to prove that the damages being claimed met each element in the test for damages. I find that the tenant had not sufficiently proven the cause of the injury nor the relationship between the cost of treatment to the alleged door incident. In regards to the alleged loss of enjoyment during the vacation, I find that the tenant's subjective description of the inter-related course of events does not adequately support a monetary claim against the landlord. I also find that the damages being claimed are too remote to be considered as a tenancy matter.

In regards to the tenant's claim of a loss of value to the tenancy, I find that section 27 of the Act states that a landlord must not terminate or restrict an essential service or facility or one that is considered to be a material term of the tenancy agreement. In some cases a landlord may terminate or restrict a non-essential service after giving 30 days' written notice in the approved form. However, the landlord must then also reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Section 65(1) states that if it is found that a landlord or tenant has not complied with the Act or tenancy agreement, an order may be issued requiring that past rent be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement. I find that justifying a past rent reduction, could be supported by proving both: a) that the value of the tenancy was reduced and; b) that the landlord has not complied with the Act or agreement. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

In this instance, the question of what was agreed-upon at the time the tenancy began is difficult to determine. Section 13 of the Act requires that the landlord prepare a written tenancy agreement and this was not done. I find that when a property being rented has a driveway that appears to be available, a tenant may logically presume that it is included, unless the landlord takes measures to ensure that the tenant understands that there is a term in the tenancy agreement that specifically excludes on-site parking. Such a term would likely be featured if there was a written agreement. If it is a verbal tenancy and nothing is said, then the landlord invites the risk of a misunderstanding over the issue. I find that the tenant in this case was not sufficiently informed by the landlord about the street-parking only term. Therefore, I find that some compensation is in order for the absence of a facility that was expected but not granted. Due to the confusion caused by the unclear terms, I find that the tenant is entitled to a token amount of $60.00 for the loss of parking as a one-time abatement. However, I find that the tenancy does not include driveway parking for the tenant.

In regards to the approximately 6 weeks during which the tenant was denied access to the laundry facilities, I find that the landlord has already committed to restore the service to its previous level. However, I find that the tenant is still entitled to a one-time abatement of $60.00 representing $10.00 per week for the duration that no laundry was available.

The landlord has also committed to providing the tenant with a written receipt for rent paid, even if paid by cheque and to reimburse the cost of the space heater claimed by the tenant, thereby resolving these matters in the dispute.

Based on the above, I find that the tenant is entitled to total monetary compensation of $231.99 comprised of $61.99 compensation for the purchase of a space heater now to be owned by the landlord, $60.00 lump sum as token compensation for the unclear parking terms, $60.00 retroactive rent abatement for the 6 week loss of laundry facilities and the $50.00 fee paid for this application. The tenant is ordered to reduce the next rent payment owed by $231.99 as a one-time abatement in rent.

Conclusion

Given the above, and based on the testimony and evidence, I find that the tenant is entitled to receive monetary compensation under the Act in the amount of $231.99 as a one-time abatement. The landlord is ordered to restore laundry access on Saturdays and to issue rent receipts each time the tenant pays rent. I further Order that the One-Month Notice dated January 24, 2010 be cancelled and of no force nor effect.

The remainder of the tenant's application is dismissed without leave to reapply.

March 2010 _____

Date of Decision

Dispute Resolution Officer

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with two applications as follows:

By the landlord: For an Order of Possession for unpaid rent; a Monetary Order for unpaid rent and to keep all or part of the security deposit; and to recover the filing fee for this application.

By the tenant: For a Monetary Order for compensation or loss under the Act and the return of the security deposit; and to recover the filing fee for his application.

At the outset, the landlord stated that the tenant moved out of the rental unit on September 30th, 2010. Therefore the landlord's application for an Order of Possession is dismissed.

Both parties attended the hearing and provided affirmed testimony. They presented oral evidence and confirmed receipt of the material they intended to submit at the hearing.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so and for what amount?
Is the landlord entitled to keep the security deposit?
Is the tenant entitled to compensation for any loss under the Act?
Is the tenant entitled to the return of the security deposit?

Is the tenant entitled to a Monetary Order, and if so for what amount?

Background and Evidence

The rental unit consists of an apartment in a multi unit complex. Pursuant to a written agreement, the month to month tenancy started on August 6th, 2010 and ended September 30th, 2010. The monthly rent of $625.00 was payable on the first of each month. The tenant paid a security deposit in the amount of $312.50. Condition inspection reports were completed at the start and the end of the tenancy.

The landlord testified that she received the tenant's written notice to end tenancy on September 21st, 2010, and that the tenant moved out on September 30th. The landlord stated that the unit was not rented until November 1st, 2010. During the tenancy, the landlord stated that she had several interactions with the tenant, and that the he never made any mention of the presence of bugs. She stated that she became aware of that concern when the tenant's mother called her on September 20th, 2010. The landlord said that she informed the tenant that she would spray the unit the next day, at which time she reported seeing two silver fish on the floor.

The landlord said that the tenant had plenty opportunity to address any concern with her directly. The landlord also stated that she received confirmation in October 2010 from Canadian Pest Control that in spite of a reported presence of bugs, it was not considered an infestation.

In her evidence, the landlord submitted in part a collection of other tenants' signatures confirming that their units were not infested.

The landlord made a monetary claim for the loss of October month's rent in the amount of $625.00.

The tenant's mother testified that her son should not have to pay that month's rent. She said that her son loss enjoyment of the unit; that his health and stress levels were impacted, which ultimately resulted in ending the tenancy prematurely. She stated that she told her son to leave if his unit was infected, and suggested that the other tenants signed the landlord's petition under duress.

In her evidence, the tenant's mother submitted in part that she told her son not to clean the carpets because the landlord would not return the security deposit. The tenant's mother's written statement also indicates that the tenancy ended on August 31st, however based on the evidence at the hearing I take it this was a typographical error, and I accept that the tenant left of September 30th, 2010.

The tenant's mother made an updated monetary claim as follows:

- Return of the security deposit: $ 312.50
- Compensation for last month's rent: $ 625.00
- Refund for cable hook-up: $ 80.00
- Filing fee: $ 50.00
- Total: $1067.50

The parties debated over the ultimate motive for the tenant's early departure; however this portion of the dispute brought no new evidence regarding the tenancy, the subject matter or the parties' statutory obligations in this matter.

Analysis

The tenant's mother testified that her son spoke to her about the problem, not the landlord. The tenant's mother lives in Fort St-John, did not attend the rental unit, and did not inform the landlord until late September 2010. Therefore I accept the landlord's evidence that she had no knowledge of any problem with the tenancy until that time.

The tenant's mother's submissions concerning bug infestation in the unit was not supported by any substantive or independent evidence. She stated that her submission concerning the landlord's petition was merely an opinion.

The evidence did support that the landlord took action as soon as she became aware of the presence of bugs in the tenant's unit. She subsequently obtained an assessment from Canadian Pest Control and I accept the landlord's submission that the unit was not bug infested. The onus is on the tenant to prove the loss of enjoyment, and that a monetary compensation is justified. The actual tenant in this matter did not appear and there was no evidence that the landlord was negligent or did not comply with the Act. The *Residential Policy Guideline* states in part that concerning the right to quiet enjoyment, the tenant must show that there had been substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy. I find that the tenant's mother's monetary claim for loss of enjoyment does not meet that test. I dismiss the claims for loss of enjoyment of the unit and the return of the cable hook-up fees.

The condition inspection report showed a claim of $106.40 for carpet cleaning. The tenant's mother acknowledged that the carpet was not cleaned. In the absence of receipts for carpet cleaning I grant the landlord half the amount for $58.20. The landlord did not provide any other evidence to justify keeping the damage deposit. Accordingly, I find that the tenant is entitled to the return of the balance of the security deposit for $254.30.

Section 26(1) of the *Act* specifies in part that a tenant must pay the rent when it is due under the tenancy agreement whether or not the landlord complies with the Act. The evidence established that the tenant complained to his mother about bugs as soon as he moved in on August 6th, 2010. To end the tenancy on September 30th, written notice should have been given on or before August 31st, 2010. On that basis I find that the landlord did not receive proper notice and is entitled to the loss of October rent for $625.00.

Conclusion

The landlord established a claim of $625.00. Since she was successful, I grant the landlord recovery of the $50.00 filing fee. I authorize the landlord to retain the tenant's $312.50 security deposit for a balance owing of $362.50.

Under her application, the tenant's mother established a claim of $254.30. Since she was partially successful, I grant her partial recovery of the filing fee for the sum of $25.00.

Pursuant to Section 72 of the Act, I set off the amount awarded to the tenant against the amount awarded to the landlord, and I grant the landlord a Monetary Order for the balance of $83.20.

Since the parties were partially successful in their respective application, I decline to make an order regarding the filing fees.

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 07, 2011.

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, RR

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order and a reduction in rent.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

The landlord noted at the start of the hearing that he had submitted evidence to the Residential Tenancy Branch on Thursday, July 13, 2011 but there was no documentary evidence in the file. The tenant acknowledged that he received the landlord's evidence and as such, I requested the evidence be faxed directly to me for consideration. Both parties were able to make comments or responses to this documentary evidence.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; and to a rent reduction for services agreed upon but not provided, pursuant to Sections 27, 67, and 72 of the *Act*.

Background and Evidence

The tenancy began as a month to month tenancy on November 30, 2010 for a monthly rent of $420.00 per month. No written tenancy agreement was completed and the parties agree that utilities were included in the rent including cable and internet services.

The tenant contends that cable and internet services were promised in his own room but not provided. He acknowledges there is a jack in his room and that on occasion he has accessed internet and cable in the common areas of the rental unit. He also notes that the landlord and other roommates have offered to help to get his jack working in his room but their offers have not been accommodated because of scheduling conflict.

The tenant submitted into evidence a "Shelter Information" document signed by the landlord confirming details of the tenancy. The landlord, however, disputes that the notation that states "in room" after listing cable, phone, hydro, internet as included utilities is not his writing and he does not remember making that notation.

The landlord contends that his advertisements, one of which was received in evidence, show only that internet and cable or to the entire rental unit not to individual bedrooms. The advertisement goes on to say that the living area serves as an entertainment centre and common work area. It also states the household holds move nights and shared computers and software but does not indicate anywhere that individual rooms have internet and cable access.

Analysis

In the case of verbal agreements, I find that where verbal terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

In the absence of a written agreement, I must, in this case, rely on the testimony provided and the advertisement submitted to determine if the landlord has restricted or not provided services agreed upon.

To be successful in a claim such as this the party making the claim must provide sufficient evidence to establish that the service has been terminated or restricted. I find the tenant has failed to meet this burden.

Conclusion

For the reasons noted above, I dismiss the tenant's Application in its entirety.

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: January 21, 2011.

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, LAT

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for compensation for loss - Section 67; and
2. An Order allowing the Tenant to change the locks to the unit – Section 70.

Both Parties attended the conference call hearing. During the Hearing, both Parties indicated their desire to reach an agreement to resolve the dispute and during the Hearing did reach a settlement agreement.

Agreed Facts

The tenancy of a basement suite in the Landlord's residence began on January 15, 2012. Rent in the amount of $1,050.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of $462.50. The Tenant was provided with digital cable and internet from the onset of the tenancy but on February 15, 2012 the Landlord disconnected the services. On February 26, 2012, the Tenants called the police to an incident involving an occupant of the Landlord's upper residence. The Tenants have provided notice and are moving out of the unit on March 31, 2012. The Landlord has accepted the Tenants' notice to end the tenancy.

Settlement Agreement

Section 63 of the Act is set out as follows:

(1) The director may assist the parties, or offer the parties an opportunity, to settle their dispute.

(2) If the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or order.

Given the authority under the Act and the Parties agreement reached during the proceedings, I find that the Parties have settled their dispute and the following records this settlement as a decision:

The Parties mutually agree as follows:

1. **The Landlord will pay the Tenants $100.00 on or before March 31, 2012 in compensation for the loss of digital cable and internet and will immediately restore such digital cable and internet.**

2. **The Tenants will change the lock to the unit door and at the end of the tenancy will restore the original lock.**

3. **These terms comprise the full and final settlement of all aspects of this dispute for both Parties.**

Conclusion

The Parties have resolved the dispute as set out above on the mutually agreed upon terms.

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: March 14, 2012.

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, ERP, RP and PSF

Introduction

The application for this dispute resolution hearing was made by the tenant seeking a monetary award for delayed cable service, an order for landlord compliance with the legislation and rental agreement, repairs and emergency repairs.

Issue(s) to be Decided

Is the tenant entitled to the monetary compensation claimed and to the other remedies requested?

Background and Evidence and Analysis

The tenancy in dispute began on January 1, 2012 under a six-month fixed term rental agreement set to end on June 30, 2012. Rent is $800 per month and the landlord holds a security deposit of $400 paid at the beginning of the tenancy.

During the hearing, the tenant submitted the following claims on which I find as follows:

Return of hydro overpayment. Under the rental agreement, the tenant is responsible for one-half of the hydro billing. The tenant submits that the landlord has been overcharging by requesting one-half of the actual hydro usage rather than one-half of the equalized billing. The landlord stated that it was his intention to reconcile the billing at the end of April 2012. I find no breach of the rental agreement in the landlord billing for actual use rather than the equalized payment, particularly in view of the fact that this is a shorter term tenancy and the billing for actual usage is more likely to result in a zero or very small balance in April 2012 and/or at the end of the tenancy. The claim is dismissed.

Delay in provision of cable service. During the hearing, the tenant gave evidence that, while the rental agreement provided for basic cable service, she did not receive such service until mid-March 2012. The landlord stated that he had not arranged for the cable service as the tenant's rent for January was six days late and he anticipated he might have to end the tenancy early for unpaid rent. The landlord said that service was actually started on March 4, 2012 and that it would have been operating sooner, but the tenant had not been available in two instances in which the cable installer had attended the rental unit. He had advised the tenant in writing for February 24, 2012 and February 26, 2012 that the installer was coming. Section 27 of the *Act* provides that a landlord may only reduce a non-essential service with 30 days notice and provided the rent is reduced accordingly. I find that the landlord was bound by the rental agreement to provide cable service for January and February of 2012. The monthly value of the service is $19.99. Therefore, I find that the tenant is entitled to recover that amount for two months and order that she may withhold $39.98 from the rent due on May 1, 2012 by that amount.

Bathtub caulking. The tenant's claim for repairs and emergency repairs arise from her belief that the bathtub needs caulking as the joint between the tub and surround is subject to mold growth. The landlord stated that the design of the surround is such that caulking is not required. As the tenant has indicated her wish to leave the tenancy at the conclusion of the fixed term, as the mold can be managed by periodic scrubbing, and as the greater potential harm is to the wall and flooring around the tub which is the landlord's responsibility, I find that it is not necessary for me to issue a formal order for the remedy sought.

Laundry. The rental agreement includes the use of laundry facilities. The tenant is of the view that she is entitled to exclusive use of the laundry, but it is also used by the landlord who she believes to have laundry facilities in his own unit. As I find no written portion of the rental agreement that provides "exclusive" use of the laundry facilities, I find that the landlord is abiding by the rental agreement and make no order on the matter.

Cost of window repair. Both parties raised this issue arising from an incident in which the tenant had accidently been locked out of her suite, leaving her four-year old autistic child isolated inside. When the landlord stated he did not have a key, the tenant called police who broke a bathroom window to gain entry. I advised that the landlord would have to file his own application to make a claim on this repair and that I could not rule on it on the tenant's application.

While I had some difficulty understanding due to a language barrier, I understood the landlord to say he had disposed of his key to the rental unit after the tenant had falsely accused him of entering the unit without proper notice or cause. The landlord also said that was the third time the tenant had locked herself out.

In any event, if the landlord does not have a key to the rental unit, I hereby order that he obtain one without delay at his own expense in order to meet his obligation to provide emergency access if required.

Conclusion

As authorized by section 72(2)(a) of the *Act,* **I hereby order** that the tenant shall withhold $39.98 from the rent due on May 1, 2012 in compensation for the delay in providing cable service in January and February 2012.

Pursuant to section 65 of the *Act,* **I hereby order** the landlord to obtain a copy of the key to the rental unit immediately and at his own expense to be kept readily accessible in the event of an emergency.

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: April 18, 2012.

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, ERP, LRE, LAT, RR, FF, O

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; a monetary order and orders to reduce the rent for services agreed upon but not provided; to make emergency repairs; to change the locks on the rental unit; to restrict the landlord's access to the rental unit.

The hearing was conducted via teleconference and was attended by the tenant only.

The tenant testified he served the landlord with the notice of hearing documents and his Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on March 2, 2012 and with his amended Application on March 9, 2012 personally and that this service was witnessed by a third party.

Based on the testimony of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act.*

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause; to a monetary order for services agreed to but not provided; for an order to allow the tenant change locks; to suspend or set conditions on the landlord's right to enter the rental unit; to allow the tenant reduced rent and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 27, 28, 30, 31, 47, 67, and 72 of the *Act.*

Background and Evidence

The tenant submits the tenancy began under a verbal tenancy agreement on November 15, 2011 for a monthly rent of $1,000.00 due in instalments on the 1st and 15th of each month and that no security deposit was paid to or requested by the landlord. The tenant submits the agreement included the provision of cable.

The tenant testified that the landlord has entered his rental unit on several occasions when the tenant has not been at home and that the landlord has assaulted him on a couple of occasions including an incident where the landlord spit on the tenant. The

tenant has submitted copies of police reports regarding interactions between the two parties.

The tenant submits the landlord has failed to provide cable as per the original agreement and that for the past couple of months she has not replenished the oil and there is no heat in the rental unit other than electric heaters that he is using. The tenant also seeks to have an exterior light replaced outside of his door and to have the shower repaired.

The tenant submits that the landlord attempted to have him sign a tenancy agreement dated February 27, 2012 with very different terms than the original agreement and he provided a copy of this document.

The tenant provided a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on March 5, 2012 with an effective vacancy date of April 5, 2012 citing the tenant has repeatedly been late paying rent; that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord; that the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord and jeopardized a lawful right or interest of another occupant or the landlord; and that the security deposit was not paid within 30 days as required by the tenancy agreement.

The tenant also seeks compensation for lost income for days when he has had to remain at home or to deal with disruptions caused by the landlord's behaviour, in the amount of $720.00 based on his salary this is equivalent to 3 days pay.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

a) The tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
b) The tenant is repeatedly late paying rent;
c) The tenant or a person permitted on the residential property by the tenant has
    i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
    ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
d) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

i. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
ii. Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

In the absence of any testimony or evidence from the landlord I accept the landlord has failed to establish that she has any cause to end the tenancy and I order the tenant is allowed to disregard the 1 Month Notice to End Tenancy for Cause issued on March 5, 2012.

Section 32 requires a landlord to provide and maintain a rental unit in a state of decoration and repair that complies with 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.

I accept the tenant's testimony, in the absence of any disputing testimony, that the original tenancy agreement obligated the landlord to provide cable and that she has not provided cable since the start of the tenancy; that the tenant has been without heat for a period of time; that the shower requires repair and the external light at the tenant's entrance requires replacement. I find the landlord has failed in her obligations under Section 32 of the *Act*.

As such, I make the following orders:

- The landlord to repair the shower;
- The landlord must provide a replacement and permanent light fixture at the tenant's entrance;
- The landlord must provide heat to the rental unit by filling the oil tank and restarting the furnace; and
- The landlord must provide cable as per the original verbal agreement.

In support of these orders, I order that the tenant is allowed to reduce the monthly rent he pays the landlord by $250.00 per month until such time as the landlord obtains an order from a Dispute Resolution Officer confirming the orders have been complied with and allowing the landlord to reinstitute the original rent amount.

In addition, based on the tenant's undisputed testimony I authorize and order the tenant is allowed to change the locks on the rental unit, in accordance with Section 31 of the *Act*. The tenant is not required to provide the landlord with a new key.

Further, I order the landlord is prohibited from entering into the rental unit at any time unless the entry is required to either comply with her obligations as a landlord or assert

her rights as a landlord. In any event, the landlord will require the tenant's express consent to enter, preferably in writing.

Finally, in relation to the tenant's claim for compensation for lost income, while I cannot grant compensation for lost income, I do find the tenant has established that has a result of the landlord's failure to provide cable and heat the tenant has suffered a financial loss and I find that $250.00 is reasonable compensation for this loss.

I order the tenant may reduce his next rent payment by this amount to satisfy this compensation. For the sake of clarity this means that for the month of April the tenant is allowed to reduce his rent by $550.00 in total - $250.00 for this compensation; $250.00 for the reduced rent in recognition of the services and repairs ordered above; and $50.00 to recover the filing fee for this Application paid by the tenant.

Conclusion

For these reasons, I find the tenancy to be in full force and effect and subject to the orders issued above.

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: March 14, 2012.

Residential Tenancy Branch

DECISION

Dispute Codes CNR, CNC, MNDC, MNSD, OLC, PSF, RPP, LRE, OPT, AAT, LAT, RR, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

- An Order cancelling a Notice to end Tenancy for Cause;
- An Order cancelling an Notice to end tenancy for unpaid rent;
- An Order of Possession;
- A Monetary Order for compensation for damage or loss under the Act;
- A Monetary Order for return of all or part of pet damage deposit or security deposit;
- An Order that the Landlord:
    - Comply with the Act, regulation;
    - Provide services or facilities required by law ;
    - Return the tenant's personal property ;
- An Order to suspend or set conditions on the landlord's right to enter the rental unit;
- An Order to allow access to the unit for the tenant or the tenant's guests;
- An Order authorizing the Tenant to change the locks to the rental unit;
- An Order allowing the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and
- An Order for the recovery of the filing fee.

Issue(s) to be Decided

Are the Notices to end tenancy valid?
Is the Tenant entitled to a cancellation of the Notices to End Tenancy?
Is the Tenant entitled to an Order of Possession?
Is the Tenant entitled to the monetary amounts claimed?
Is the Tenant entitled to orders that the Landlord comply with the Act, provide services, and return the Tenant's personal property?
Is the Tenant entitled to having conditions set on the Landlord's right to enter the unit?
Is the Tenant entitled to access to the unit?
Is the Tenant entitled to change the locks of the unit?
Is the Tenant entitled to an order for a reduction in rent for facilities agreed upon but not provided?
Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy of a coach house started on January 15, 2012. Rent of $900.00 is payable on the first day of each month. At the onset of the tenancy the Landlord collected $450.00 as a security deposit.

On May 31, 2012, the Landlord states that the Notice to end tenancy for cause (the "Cause Notice") was personally served on the Tenant. The Landlord states that mostly all dealing with the Tenant were with the Landlord. There is no dispute that the Cause notice lists the following cause:

The tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Seriously jeopardized the health safety or lawful right of another occupant or the landlord;
- Put the landlord's property at significant risk.

The Landlord states that he has no evidence to provide other than his oral evidence that since April 2012 the Tenant has made five or six calls to the police on invalid issues with the Landlord who installed a surveillance camera on the property. The Landlord also states that the Tenant called the Landlord at work and spoke to the Landlord's employer about complaints. The Landlord states that the Tenant placed the Landlord's family at risk by yelling, screaming and calling them names in front of neighbours. The Landlord states that the Tenant made threats of physical violence. The Landlord states that the threats were never reported to the police.

The Tenant denies making threats and states that the calls to the police were instigated by the Landlord and that on at least one occasion, the Tenant believes the Landlord did call the police. The Tenant denies yelling and screaming or calling the Landlord at work. The Tenant states that he only called the police after the Landlord disconnected the heat, cable, electricity and laundry access on June 1, 2012.

The Landlord states that the Tenant failed to pay rent for June 2012 and that on June 2, 2012, the Landlord personally served the Tenant with a Notice to end tenancy for unpaid rent (the "Notice"). The Tenant states that rent for June 2012 was paid and provided a copy of a bank draft made out to the Landlord for the rent, dated May 28, 2012. The Tenant also provided copies of bank drafts for rent for every other month of the tenancy. The Parties agree that the Tenant would leave the bank drafts at the Landlord's door each month. The Tenant states that when he was served with the Notice that he asked the Landlord several times to resolve the issue and that the Tenant offered to issue a new bank draft to the Landlord but the Landlord refused. The Landlord states that the Tenant never approached the Landlord with a replacement cheque.

The Tenant made an application to dispute the Cause Notice and the Notice on June 8, 2012. The Tenant states that this application was served on the Landlord on June 12 or 13, 2012 while in the company of a police officer. The Landlord states that the application was served to him on June 15, 2012. The Parties agree that the Tenant's amended application was served on the Landlord on June 16, 2012.

The Tenant states that issues with the tenancy started shortly after the onset of the tenancy and that on April 14, 2012 the heat to the unit was turned off. The Tenant states that this was remedied shortly after texting the Landlord to return the heat but that again on May 25, 2012, the heat was turned off. The Tenant states that the heat was not turned on for a couple of days. The Tenant states that the Landlord also took over the Tenant's dedicated parking spot and then harassed the Tenant about parking on the lane and threatened to tow the Tenant's car. The Tenant states the Landlord started to restrict his access to the laundry facilities by limiting his days or times of use. The Tenant states that although no written agreement was entered into, the unit was advertised as including in the rent a separate washer and dryer, utilities, cable and internet and that these were provided at the onset of the tenancy.

The Tenant states that on June 1, 2012, the Landlord shut off his heat, disconnected the cable and totally restricted access to laundry and the parking spot. The Tenant states that he believes that as the Landlord moved into the property containing the coach house at the same time as the Tenant that the Landlord discovered the coach house was rented lower than surrounding coach houses and wanted to get rid of the Tenant in order to re-rent the unit for a higher price. The Tenant states that a day before he was locked out of the unit, the Landlord threatened the Tenant's son and followed the Tenant's son to work. The Landlord states that the Tenant's parking spot was only restricted for a couple of days and that no threats were ever made towards the Tenant's son. The Landlord denies all the statements of the Tenant and states that on June 12, 2012, the Tenant's unit was found with only a few items in the fridge, the heat was turned on high and the windows were open.

The Landlord states that the Tenant moved out on June 9 or 10, 2012. The Landlord states that on one of these dates the Tenant was observed on the surveillance video moving furniture out of the unit. The Landlord states that he spoke with the Residential Tenancy Branch on June 11, 2012 and was informed that he was able to take possession of the unit on the basis of abandonment. The Landlord states that he entered the Tenant's unit at 2:00 a.m. on June 12, 2012 and that things were mostly gone. The Landlord states that he then acted on the belief that the unit was abandoned and that he was entitled to take possession of the unit. The Landlord states that with the attendance of police on June 12, 2012, possession of the unit was taken and the locks were changed.

The Tenant states that due to the increasing problems with the Landlord, the Tenant was concerned that the Landlord or Landlord would enter his unit without permission. The Tenant states that as a result of his concerns he moved out his most valuable possessions from the unit but did not abandon the unit. The Tenant states that following the Landlord taking possession of the unit, he was given one hour to remove his belongings from the unit but that several items were missing. The Tenant states that

the food in his fridge and freezer was spoilt and estimated the value of this food at approximately $300.00. The Tenant also states that a medication that was to be kept refrigerated also became unusable and that while his insurance paid for most of this medication, he paid $312.00 out of his pocket for this medication. The Tenant states that items such as a computer, dolly, and stamp collection were missing, The Tenant states that after speaking with a police staff sergeant he was encouraged to regain possession of the unit and that police are continuing to investigate on two files.

The Tenant claims an Order of Possession, the restoration of his services and utilities, return of his missing items and compensation for loss of the unit, loss of quiet enjoyment and loss of food and medication. The Tenant claims only the conditions as contained in the Act in relation to providing required notice for entry be set on the Landlord's right to enter the unit and claims an order allowing him to change the locks to the unit, with no key to be provided to the Landlord. The Tenant claims a monetary amount of $4,800.00 and states that he only seeks reasonable compensation. The Tenant states that he has been staying in his car and on a friend's couch since the Landlord locked him out.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Given the lack of evidence to support the Landlord's statements of the Tenant's conduct, and considering the Tenant's denial of the statements, I find that the Landlord has failed, on a balance of probabilities, to substantiate cause. Accordingly, I find the Cause Notice to be invalid and the Tenant is entitled to a cancellation of the Cause Notice.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the

arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. Noting that the Tenant filed an application on June 8, 2012 to dispute the Notice and accepting the undisputed evidence of the Landlord that the Notice was served on Saturday June 2, 2012, I find that the Tenant filed his application within the time required. Given the Landlord's evidence of the Tenant's practice in paying rent, I find that this practice was approved by the Landlord and considering the evidence of the bank draft for June 2012 rent, I find that the Landlord has not substantiated that the Tenant failed to pay rent for June 2012 and that the Notice is therefore not valid. As such, I find that the Tenant is entitled to a cancellation of the Notice.

Section 27 of the Act provides that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the unit as living accommodation. Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including exclusive possession of the rental unit subject only to the landlord's right to enter the unit as set out in Section 29 of the Act. Section 29 of the Act provides as follows:

> (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
>
> > (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
> >
> > (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
> >
> > > (i) the purpose for entering, which must be reasonable;
> > >
> > > (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
> >
> > (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
> >
> > (d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

The relevant portions of Section 26 of the Act provide as follows:

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) Subsection (3) (a) does not apply if

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

Section 24 of the Residential Tenancy Regulation provides as follows in relation to abandonment:

(1) A landlord may consider that a tenant has abandoned personal property if

(a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or

(b) subject to subsection (2), the tenant leaves the personal property on residential property

(i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or

(ii) from which the tenant has removed substantially all of his or her personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or

(b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

Given the date of the Tenant's application to dispute the Notices to End Tenancy and accepting the Landlord's evidence that he spoke with the Residential Tenancy Branch about the circumstances following this date, I find that the Landlord should reasonably have know that the Tenant was disputing the end of the tenancy. I find it highly unlikely that the RTB would have informed that Landlord, in the face of such an application, that the Landlord was entitled to take possession of the unit. Considering also the Landlord's evidence that not all items were gone, I find overall that the Landlord was not entitled to consider the circumstances found on June 12, 2012 to be a reasonable expectation that the Tenant would not return to the property.

As the Landlord entered the unit without right and acted to take possession of the unit and to restrict the Tenant from his personal property without entitlement, I find that the Tenant has substantiated a right to possess the unit and is therefore entitled to an Order of Possession, effective immediately. As the tenancy is continuing, I dismiss the Tenant's claim for return of the security deposit with leave to reapply.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Given the above findings that the Landlord took possession of the Tenant's unit without lawful right, I find that the Tenant has substantiated a loss of quiet enjoyment and possession of the unit through the breach of the Landlord. I also find that the Tenant is entitled to a monetary award that reflects the impact of the Landlord's actions on the Tenant's living conditions since being locked out of the unit and that the Tenant is therefore entitled to reasonable compensation of **$1,800.00**.

Although the Landlord has denied terminating the Tenant's utilities, cable and laundry, I find the Tenant's evidence to be sufficiently persuasive to find on a balance of

probabilities that the Tenant was without these services or facilities for the period June 1 to 12, 2012 as a result of acts by the Landlord. As the Landlord did not dispute the Tenant's evidence of being provided these services or facilities from the onset of the tenancy and as I find that utilities are essential to the Tenant's use of the unit, I find that the Tenant has substantiated an entitlement to compensate for the loss of utilities in the amount of **$100.00 and an additional $50.00** for the loss of laundry and cable. Further, should the Landlord fail to restore these services and facilities to the unit, I order the Tenant to reduce rent by the amount of **$150.00** for each month or part thereof that these services and facilities are not restored. Given the finding that the Landlord terminated the utilities, it is reasonable to find that food in the fridge would spoil upon this termination however as the amount of food loss was indeterminate, I find that the Tenant is only entitled to nominal compensation of **$100.00**. Given the lack of corroborating evidence in relation to the loss of other items from the unit, including the medicine, I dismiss this part of the Tenant's claim.

Given the finding that the Landlord entered the Tenant's unit and took possession of the unit without right, I find that the Tenant has substantiated a high level of concern in relation to the Landlord's access to the unit and I therefore find that the Tenant is entitled to an order allowing the Tenant to replace the locks on the unit. I also find that the Tenant is also entitled to an order that the Landlord comply with section 27 of the Act as set out above.

The Tenant's monetary entitlement totals $2,050.00. I also find that the Tenant is entitled to recovery of the $50.00 filing fee for a total entitlement of **$2,100.00**. I provide a monetary order for this amount however should the Tenant choose, this amount may be set off against future rent owing.

Conclusion

The Notices to End Tenancy for Unpaid Rent and Cause are cancelled.

I Grant an Order of Possession to the Tenant effective immediately.

I Order that the Tenant is allowed to change the locks to the unit.

I Order the Landlord to comply with the notice requirements as contained in Section 27 for entry into the unit.

I Order the Landlord to immediately restore utilities, cable and laundry access to the Tenant.

I Grant the Tenant a monetary order under Section 67 of the Act for **$2,100.00**. If necessary, this order may be filed in the Small Claims Court and 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: July 3, 2012.

Residential Tenancy Branch

Dispute Codes:

MNR, OPR, MNSD, FF, ET

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated March 9, 2012 and a monetary order for rent owed. The landlord had also applied to end the tenancy immediately without Notice under section 56 of the Act. However, this remedy is reserved for situations where no Notice was issued. Therefore this hearing dealt only with the Notice to End Tenancy for Unpaid Rent dated March 9, 2012 .

Both parties appeared and gave testimony during the conference call hearing.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent and whether or not the landlord is entitled to monetary compensation for rental arrears.

Background and Evidence

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated March 9, 2012 with effective date of March 13, 2012. Also in evidence was a copy of the tenancy agreement, copies of communications between the parties, a copy of the tenant's account ledger showing the accrued arrears and a copy of a Notice of Rent Increase issued on December 14, 2010, effective April 1, 2011.

The tenancy began in December 1996, at which time the tenant paid a security deposit of $325.00. The landlord testified that the tenant had originally rented the unit with a partner and co-tenant but had later lived in the unit on her own.

The landlord testified that the current rent of $782.00 did not include utilities or cable, as the tenant was required under the contract to pay 1/3 of utilities and ½ of the cable costs. The landlord testified that the tenant had permitted others to move into the unit and share it with her for extended periods of time. The landlord testified that this was in

violation of the tenancy agreement which required that only the persons named on the tenancy agreement were allowed to reside in the rental unit. According to the landlord, this meant that any new occupant be added to the tenancy agreement and must first be approved by the landlord. The landlord testified that the additional occupants caused a significant increase in the charges for hydro, and gas and therefore the landlord had requested that the tenant pay 50% of the utilities. The landlord testified that the cable services were recently discontinued because the charges had been increased.

The landlord testified that, although the rent had been properly increased from $765.00 to $782.00 in April, 2011, the tenant still continued to pay only $765.00 for the 9-month period until December 2011. A copy of the Notice of Rent Increase was in evidence. The landlord testified that the tenant fell into arrears of $153.00 during this period. The landlord testified that the tenant then began only to pay $720.00 for each of the months of January 2012, February 2012 and March 2012 accruing a further $186.00 in arrears for total rental arrears owed of $339.00.

The landlord stated that, in addition to the above, the tenant also owed late fees of $230.00 charged at $10.00 per day. The rental account ledger showed that these charges were imposed, but not paid. The landlord testified that late fees were charged pursuant to a term in the tenancy agreement that provided that the tenant would be responsible for "late fees." However, no late-fee amount was specified in the contract.

The landlord testified that he served the tenant with the Ten Day Notice to End Tenancy, but she had not paid the amount owed, nor had she vacated the unit.

The tenant acknowledged that she did not file for dispute resolution to dispute the Ten Day Notice to End Tenancy for Unpaid Rent. The tenant's position was that the rental arrears being claimed by the landlord were never owed.

The tenant testified that both parties had agreed that the rent of $765.00 included all utilities. In regard to the alleged rent increase to $782.00, the tenant stated that she was told that the rent increase Notice was not properly issued and therefore had no effect. The tenant stated that, for this reason, she disagreed with the landlord's claim of $153.00 for the 9-month period from April 2011 including December 2011. With respect to the short payments for January, February and March 2012, the tenant stated that there was some difficulty with her social benefits and the funds would soon be paid.

The tenant pointed out that the landlord arbitrarily eliminated cable T.V. without notice from December onwards, for which the tenant had previously received a discount of 50% towards the cost. The tenant testified that she now has to pay her own cable at a cost of almost $50.00 per month for basic cable service that had been part of the

tenancy. The tenant claimed that this devalued her tenancy by at least $25.00 per month. The tenant testified that, in addition, the landlord had severely restricted use of the laundry facilities and is trying to terminate this amenity altogether. According to the tenant, laundry usage as part of the tenancy is valued at least $20.00 per week.

Analysis

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. When a tenant fails to comply with section 26, then section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice. This section of the Act also provides that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice is cancelled, or dispute the notice by making an application for dispute resolution.

In this instance I find that the tenant was in arrears at the time the Notice was served on March 9, 2012 and the tenant did not pay the arrears.

I find that section 46(5) of the Act provides that if a tenant does not pay the rent or make an application for dispute resolution in accordance with the above, then the tenant is conclusively presumed to have accepted that the tenancy will be ended..

I find that the tenant did not pay the outstanding rent within 5 days and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession.

With respect to the effective date for the Order of Possession, I find that, due to inaccuracies that may have affected the tenant's ability to comply with the Ten Day Notice and the landlord's contravention of numerous sections of the Act, the effective date will be June 30, 2012 instead of the date shown on the Notice.

In regard to rent owed, I find that the landlord has established a total monetary claim of $339.00, comprised of accrued rental arrears from April 2011to March 2012 inclusive.

With respect to the landlord's claim for $230.00 in late fees, I find that this claim is not supported. Section 7(1) (d) of the *Residential Tenancy Regulation*, (the *Regulation*), provides that a landlord can charge an administration fee of not more than $25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent. I note that section 72(2) of the *Regulation* prohibits the charge of this fee unless the tenancy agreement between the parties specifically provides for that fee. In this instance, the Landlord has submitted a copy of the tenancy agreement into evidence

showing that the parties had both agreed to that the tenant would be responsible to pay a late fee as a term of the tenancy agreement. However, because amount is not stated in the contract the enforcement of the term is not possible. .

Section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if

(a) the term is inconsistent with this Act or the regulations,

(b) the term is unconscionable, or

(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

For this reason, I find that the portion of the landlord's application claiming late fees must be dismissed.

In regard to the landlord's attempt to impose additional costs on the tenant, to cover alleged increase in utilities, I find that section 14(1) states that a tenancy agreement may not be amended to change or remove a standard term and can only be amended to add, remove or change a term other than a standard term if both parties agree. Given the above, I find the Act does not permit the landlord to charge additional utility fees.

With respect to restricting facilities and services previously offered in the tenancy, I find that section 27(2) allows a landlord to terminate or restrict a service or facility, other than essential services, but only if the landlord gives 30 days' written notice, in the approved form,. The landlord must also reduce the tenant's rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. (my emphasis)

In the situation before me, I find the landlord decided to terminate the tenant's cable services and restricted her from using the laundry and the storage area without proper notification or reducing the rent. I find that this violated the Act.

Therefore, I find that the value of this tenancy had been reduced and a retroactive rent abatement must be imposed for the tenant's loss of cable in the amount of $25.00 per month for the months of December 2011, January, February, March, April, May and June 2012, for a total rent abatement of $175.00

I also find that there must be a rent abatement for the landlord's past restriction of laundry access and storage in the total amount of $86.00.

Finally I find the tenant is entitled to $240.00 for the landlord's total elimination of laundry facilities for the future months of April 2012, May 2012 and June 2012.

The total rent abatement for devaluation of the tenancy is $501.00.

In setting off the amount owed to the landlord of $339.00, from the $501.00 rent abatement to which the tenant is entitled, I find that a balance of $162.00 is still outstanding in favour of the tenant.

Accordingly, I find that the tenant must reduce her rent for April, May and June 2012 by deducting $54.00 from the rent owed each month, making the remaining rent owed for each of these months $728.00. This amount is due on the first day of each month.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective June 30, 2012. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I hereby order that the tenant's rent for April 2012, May 2012 and June 2012 is reduced to $728.00.

The remainder of the landlord's application, including the request to be reimbursed for the cost of the application is dismissed without leave.

The security deposit being held in trust for the tenant must be administered in accordance with section 38 of the Act.

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: April 10, 2012.

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD OLC FF

Introduction

This is an application under the *Residential Tenancy Act* (the "*Act*") by the tenant for a monetary order for return of double the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order directing the landlord to comply with the *Act,* regulation or tenancy agreement, and to recover the filing fee.

The tenant, the husband of the tenant, and the landlord attended the hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

The landlord confirmed receipt of the tenant's evidence prior to the hearing and that she had the opportunity to review the evidence. The landlord submitted 85 pages of evidence late contrary to the rules of procedure. As a result, the parties were advised that the landlord's evidence was excluded from the hearing. The landlord was advised that she could provide evidence orally during the hearing as an alternative.

Preliminary and Procedural Matters

At the outset of the hearing, the tenant confirmed that she was reducing her monetary claim from $3,650.00 to $2,600.00 due to the fact that since she filed her application she had received her security deposit of $1,000.00 from the landlord on October 15, 2012. As a result, the tenant's monetary claim was reduced from $3,650.00 to $2,600.00 during the hearing as the amendment did not prejudice the landlord.

The issue of jurisdiction was also addressed at the outset of this hearing. As the tenancy was approximately six months long, this tenancy falls under the jurisdiction of the *Residential Tenancy Act*, and is not a vacation rental as the landlord initially stated at the start of the hearing. The tenant stated that she was never advised that the rental

unit was a vacation rental. Therefore, based on the terms of the tenancy agreement between the parties, I find I have jurisdiction to hear this dispute under the *Act.*

Issues to be Decided

- Is the tenant entitled to the return of double the security deposit pursuant to section 38 of the *Act*?
- Is the tenant entitled to a monetary order under the *Act?*
- Should the landlord be ordered to comply with the *Act,* regulation or tenancy agreement?

Background and Evidence

A fixed term tenancy began on April 1, 2012, which reverted to a month to month tenancy on June 23, 2012 as a new fixed term tenancy agreement was not entered into by the parties. Monthly rent in the amount of $1,600.00 was due on the first day of each month. The landlord requested the tenant pay a $1,000.00 security deposit at the start of the tenancy, which exceeds the limit of ½ of a month's rent under section 19 of the *Act* and will be addressed later in this decision. The tenant paid a security deposit of $1,000.00 at the start of the tenancy. The tenant vacated the rental unit on or about September 30, 2012.

The tenant is seeking a monetary order in the amount of $2,600.00 comprised of the following:

Double security deposit calculated at $1,000.00 original security deposit X 2	$2,000.00
Compensation for loss of phone, internet and cable from April 1, 2012 to April 21, 2012 (and loss of phone for the full 6 months of the tenancy)	$1,600.00
Subtotal	**$3,600.00**
Less $1,000.00 original security deposit returned to tenant by landlord on October 15, 2012	($1,000.00)
TOTAL	**$2,600.00**

The tenant testified that she moved into the rental unit on April 13, 2012. The parties agree that phone, internet and cable were included in the monthly rent, which is supported by the written tenancy agreement submitted in evidence.

The landlord stated that she was in another country on April 13, 2012 and received a call regarding the tenant having no cable and internet when the tenant moved into the rental unit on April 13, 2012. The tenant disputed the landlord's testimony. The tenant stated that the internet and cable services were restored on April 21, 2012. The parties agree that the phone service was not restored during the tenancy.

The parties agreed that the landlord compensated the tenant for the loss of phone, cable and internet between April 13, 2012 and April 21, 2012 in the amount of $150.00. The tenant stated that the amount she is claiming of $1,600.00 is the value she assigned to the loss of having no phone in the rental unit for the full 6 months of the tenancy, and for the loss of internet and cable between April 1, 2012 and April 21, 2012 when the internet and cable service was restored.

The landlord testified that she received an e-mail from the tenant after the first three month fixed term tenancy agreement stating that the tenant was enjoying the unit, and requested to extend the tenancy another three months.

During the hearing, the landlord testified that a forwarding address was not provided by the tenant in writing at the end of the tenancy, nor did the tenant attend for a move-out condition inspection. The tenant testified that her written forwarding address was provided to the landlord in a letter dated September 6, 2012, which was submitted in evidence.

Analysis

Based on the oral testimony, documentary evidence, and on a balance of probabilities, I find the following.

Tenant's claim for return of double the security deposit - Section 38 of the *Act* states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

> (a) the date the tenancy ends, and
>
> (b) **the date the landlord receives the tenant's forwarding address in writing,**
>
> the landlord must do one of the following:
>
> (c) **repay, as provided in subsection (8), any security deposit** or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
>
> [emphasis added]

The landlord testified that the tenant did not provide her written forwarding address at the end of the tenancy. The tenant referred to a letter dated September 6, 2012 as evidence that she provided her written forwarding address to the landlord. The landlord confirmed receiving the letter dated September 6, 2012, on the same date as it was hand delivered by the tenant.

I have examined the letter from the tenant to the landlord dated September 6, 2012. Although the letter contains the PO Box of the tenant at the top of the first page, the letter does not specifically state that the address on the first page is the forwarding address of the tenant. In addition, the letter included email contact information and was sent 24 days before the end of the tenancy, and requested that a security deposit be paid before the end of tenancy, which is not in keeping with the *Act.* Therefore, **I find** the tenant has failed to prove she specifically provided her forwarding address to the landlord.

As a result of the above, and based on the disputed testimony of the parties and in the absence of further evidence from the tenant, **I find** the tenant has failed to prove that the landlord breached section 38 of the *Act,* as the tenant received the full security deposit in the amount of $1,000.00 on October 15, 2012. Given the above, **I find** the tenant is not entitled to the return of double her security deposit. **I dismiss** this portion of the tenant's application in full due to insufficient evidence, without leave to reapply.

Tenant's claim for loss of phone, internet and cable services – The tenant has claimed $1,600.00 as compensation for the loss of the internet and cable service between April 1, 2012 and April 21, 2012, and for the phone service between April 1, 2012 and September 30, 2012. The parties agreed that compensation in the amount of

$150.00 has already been paid by the landlord for the loss of internet, phone and cable between April 13, 2012 and April 21, 2012. As the tenant confirmed that she did not move into the rental unit until April 13, 2012, **I find** that the tenant did not suffer a loss between April 1, 2012 and April 12, 2012 as she was not physically inside the rental unit and is not entitled to any compensation for that time period as a result.

As the parties have already agreed upon compensation of $150.00 for the dates of April 13, 2012 to April 21, 2012, **I find** that the tenant has already been compensated for the loss of services for those dates as a result and is not entitled to further compensation.

The remaining claim would be the loss of the phone service between April 22, 2012 and the end of the tenancy, September 30, 2012. The tenant did not provide supporting evidence regarding the value of the loss of phone service between April 22, 2012 and September 30, 2012. I reject the tenant's claim that such a loss would be valued at $1,600.00. I find that the tenant did suffer a loss of the phone service, however, and **I grant** the tenant a nominal monetary award as follows:

Loss of phone service between April 22, 2012 and April 30, 2012	$5.00
Loss of phone service between May 1, 2012 and May 31, 2012	$10.00
Loss of phone service between June 1, 2012 and June 30, 2012	$10.00
Loss of phone service between July 1, 2012 and July 31, 2012	$10.00
Loss of phone service between August 1, 2012 and August 31, 2012	$10.00
Loss of phone service between September 1, 2012 and September 30, 2012	$10.00
TOTAL	**$55.00**

I caution the landlord that section 19 of the *Act* states:

> **19** (1) **A landlord must not require or accept either a security deposit** or a pet damage deposit **that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.**
>
> (2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.
>
> [emphasis added]

During the hearing the landlord was advised that the maximum security deposit related to this tenancy was $800.00 and not $1,000.00. As a result of the landlord's breach of section 19 of the *Act*, **I grant** the tenant the recovery of the full filing fee of **$50.00,** which I would have otherwise not granted as the majority of the tenant's application was dismissed.

I find that the tenant has established a total monetary claim of **$105.00** comprised of $55.00 for the loss of phone service and $50.00 for the recovery of the filing fee. **I grant** the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **$105.00**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I grant the tenant a monetary order in the amount of $105.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

I dismiss the remainder of the tenant's application due to insufficient evidence, without leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 14, 2012

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RP, RR

Introduction

This conference call hearing was convened in response to the tenant's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; an order for the landlord to comply with the Act, regulation, or tenancy agreement, and to make repairs to the rental unit; and to allow a tenant reduced rent for repairs, services or facilities agreed upon but not provided.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order, and if so for what amount?
Should the landlord be issued orders concerning repairs and compliance?
Is the tenant entitled to reduced rent?

Background and Evidence

The rental unit consists of a room in a shared single family dwelling. Pursuant to a written agreement, the month to month tenancy started in June 2009. The rent is $450.00 per month.

The tenant testified that the previous landlord left her with a TV/DVD with cable service before turning the tenancy over to the new landlord approximately one and a half years ago. She stated that these services, which are terms included in the tenancy agreement, were removed three months ago without notice by the landlord. In her documentary evidence the tenant provided a copy of the landlord's notice dated March 18, 2012 wherein the landlord apologized for the inconvenience.

The tenant stated that about the same time heat has been discontinued; that the back door is left unlocked by another tenant, which allows unwanted visitors to have access inside the house.

The tenant stated that the bathroom fan and the oven need to be fixed; the tenant provided a copy of a letter dated February 27, 2012, given to the landlord addressing a number of problems that included the oven.

Concerning the TV/DVD and cable service, the landlord's agent stated that he does not have a copy of the original tenancy agreement. He stated that he has addressed the unwanted visitors issue by keeping only one other roommate, and that he sent a letter to that roommate concerning visitors and securing of the house.

Concerning the heat and other repairs, the landlord's agent said that he is waiting to obtain a city permit to undertake significant repairs and renovations to the property.

Analysis

There was no evidence from the landlord's agent regarding this dispute. On the tenant's testimony and documentary evidence I accept that the landlord removed the TV/DVD and cable service that was part of the original agreement. Section 14(2) of the Act only allows a landlord to remove a term of the agreement if both the landlord and the tenant

agree. In this case the tenant did not agree and I find that the tenant did lose facilities that were provided by the original landlord.

The tenant also claimed the loss of heat, ventilation in the bathroom, and the oven. The landlord's agent did not dispute the tenant's testimony; he stated that the landlord is waiting for proper permits to undertake renovations and repairs. Section 27(2) of the Act states in part that a landlord may terminate or restrict a service by giving written notice in the approved form, and by reducing the rent in an amount equivalent to the reduction in the value of the tenancy agreement resulting from the termination of the service. I find that the tenant was inconvenienced by having limited restriction in the rental unit with limited loss to the value of her tenancy.

Accordingly I hereby award the tenant a rent abatement of $150.00 for the loss of heat and cable services. Effective June 1, 2012, and every month thereafter I further award the tenant the following rent reduction until the following services are restored:

- $35.00 per month for the loss of the TV/DVD and cable service.
- $25.00 per month for the loss of the oven.

I hereby order the landlord to repair the bathroom fan and to ensure access to the property is restricted to the tenants by no later than July 1, 2012. If the landlord fails to comply, the tenant is a liberty to make an application for dispute resolution and apply for an order to change the locks.

Conclusion

I award the tenant a one-time rent reduction of $100.00 from the next rent payment. Effective June 1, 2012, if the services noted above (TV/DVD, cable, and oven) have not been restored, I also authorize the tenant to reduce rent by $35.00 and $25.00 respectively.

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 24, 2012.

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, O

Introduction

This hearing was convened by way of conference call in repose to the tenant's application for the return of the security deposit and to deal with other issues.

The tenant and landlord attended the conference call hearing, gave sworn testimony. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to recover the security deposit?
- Is the tenant entitled to recover other sums the tenant claims is owed by the landlord?

Background and Evidence

The parties agree that this fixed term tenancy started on November 01, 2011 and ended at the end of the fixed term on March 31, 2012. Rent for this unit was $1,875.00 per month due on the first day of each month in advance. The tenant paid a security deposit of $900.00 on November 01, 2012.

The tenant testifies that he gave the landlord his forwarding address in writing and has provided a copy of this letter which was posted on July 11, 2012. The tenant provided a Canada Post tracking number for this letter which was sent to the landlord on July 11, 2012 and therefore deemed to have been served five days after it was posted.
The tenant testifies that he did not give the landlord permission to keep all or part of the security deposit. The tenant states that he does not waive his right to claim double the security deposit as the landlord has not returned it within 15 days of receiving the tenants forwarding address in writing.

The tenant testifies that the tenancy agreement in place states that basic cable and internet are included in the rent. The tenant testifies that he had an agreement with the landlord that the tenant would settle any difference in the cable bill at the end of the tenancy for any extras he has included in this service. The tenant testifies that in January, 2012 the cable and internet were terminated and when the tenant contacted the cable company he was told the bill had not been paid by the landlord as the bills were in the landlord's name. The tenant testifies as he could not get hold of the landlord he had to pay the sum of $113.00 to the cable company to have the cable and internet reconnected. The tenant has provided an e-mail from the company showing this payment was made. The tenant testifies he has not been given a copy of the cable bills to see what his share of these will be but is happy to settle with the landlord for an amount of $300.00 which includes the amount the tenant paid to have the service restored.

The landlord testifies that the tenant was sent a cheque for $900.00 in the middle of June, 2012. The landlord acknowledges that this cheque was sent by normal mail and acknowledges that she has no proof that the cheque was received by the tenant or sent by the landlord.

The landlord testifies that the cable bills went to the tenant's mailbox and were not forwarded to the landlord by the tenants. The landlord states she is also happy to settle on the sum of $300.00 for the tenant's additional cable usage.

Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on July 16, 2012, deemed served five days after posting. As a result, the landlord had until July 31, 2011 to return the tenants security deposit or file an application to keep it. I find the landlord did not return the security deposit and has not filed an application to keep it. Therefore, I find that the tenant has established a claim for the return of double the security deposit to the sum of **$1,800.00** pursuant to section 38(6)(b) of the *Act*.

As the parties have agreed to the following deductions of **$300.00** including the $113.00 the tenant paid to have the cable service reconnected this sum will be deducted from the tenant's monetary claim. A Monetary Order has been issued to the tenant pursuant to s. 38(6)(b) of the *Act* for the sum of **$1,500.00**

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **$1,500.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

Dated: December 20, 2012.

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MNDC,RR, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent; for a monetary Order for money owed or compensation for damage or loss; to reduce the rent for services or facilities agreed upon but not provided; and to recover the filing fee from the Landlord for the cost of filing this application. At the hearing the Tenant withdrew the application to set aside the Notice to End Tenancy, as she is vacating the rental unit today.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord stated that she faxed documents to the Residential Tenancy Branch on July 28, 2012, copies of which were personally served to the Tenant on that date. The Tenant acknowledged receipt of the Landlord's evidence however it was not before me at the time of the hearing. The Landlord requested an adjournment to provide time for her evidence package to be delivered to me. The Tenant opposed the request for an adjournment and argued that the evidence is primarily a written summary submitted by the Landlord and a summary of hydro costs that could be introduced orally. The Landlord agreed that the evidence could be introduced orally. I concluded that the hearing would proceed and that an adjournment would be considered if the parties could not agree on the content of evidence submitted by the Landlord.

The Tenant stated that she personally served the Application for Dispute Resolution, the Notice of Hearing, and the Ten Day Notice to End Tenancy to the Landlord on July 10, 2012. The Landlord stated that she received the Application for Dispute Resolution and the Notice of Hearing, but she did not receive a copy of the Ten Day Notice to End Tenancy. As the Landlord did not acknowledge receipt of the Ten Day Notice to End Tenancy, it was not accepted as evidence. As the Notice is no longer a subject of this dispute, an adjournment for the purposes of re-serving the Notice to End Tenancy was not considered.

Issue(s) to be Decided

The issues to be decided are whether the Tenant is entitled to reduce the rent by $25.00 per month in compensation for the withdrawal of laundry and cable service, and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on August 01, 2011; that the Tenant was required to pay rent of $650.00 by the first day of each month; and that the Tenant agreed to pay $50.00 per month for hydro.

The Landlord and the Tenant agree that at the start of the tenancy they agreed the Tenant would use the laundry facilities in the Landlord's home in exchange for helping the Landlord with the chickens and other unspecified chores. The parties agreed that this arrangement worked well for the majority of the tenancy and that the Tenant has been prevented from using the facilities since the middle of May of 2012.

The Landlord and the Tenant agreed that the Tenant had never been asked to mow the lawn during the tenancy; that the Tenant was asked to mow the lawn in the Spring of 2012; that the Tenant refused to mow the lawn; and that the Landlord withdrew her consent to use the laundry facilities as a result of the Tenant refusing to mow the lawn.

The Landlord and the Tenant agree that the Tenant only paid $675.00 in rent/hydro for June and July of 2012. The Tenant stated that she withheld $25.00 per month in exchange for being denied access to the laundry facilities and she is now seeking authorization to reduce her rent by this amount.

The Landlord and the Tenant agree that cable service was included with the tenancy. The Tenant contends that access to cable was discontinued when the Tenant refused to cut the lawn in the middle of May of 2012. The Landlord stated that her cable is still working; that she has checked the cable leading to the rental unit and has found it intact; and that she has not terminated the cable service provided to the Tenant.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the agreement to use the laundry facilities was linked to personal services provided to the Landlord by the Tenant, specifically an agreement to help her with the chickens and other unspecified services. I find that this was an employment agreement of sorts, rather than a term of the tenancy agreement. As the arrangement was not a term of the tenancy agreement, I find I do not have jurisdiction over this aspect of the dispute.

There is a general legal principle that places the burden of proving that damage occurred on the person who is claiming compensation for damages, not on the person

who is denying the damage. In these circumstances, the burden of proof rests with the Tenant and I find that the Tenant has submitted insufficient evidence to show that cable service was terminated in May of 2012. In reaching this conclusion, I was strongly influenced by the absence of evidence that corroborates the Tenant's testimony that the service was terminated or that refutes the Landlord's testimony that it was not terminated. On this basis, I dismiss the Tenant's application to reduce the rent as compensation for cable service being withdrawn.

Conclusion

I find that the Tenant's Application for Dispute Resolution has been without merit and I therefore dismiss her claim to recover the fee she paid to file this Application for Dispute Resolution. In determining that the Application for Dispute Resolution was without merit, I was heavily influenced by the finding that the Tenant failed to establish that she is entitled to a rent reduction; that she did not have authority to reduce her rent/hydro payment by $25.00 per month in June or July; and that she did not pay all the rent/hydro she was obligated to pay in June or July of 2012.

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: July 31, 2012.

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, RR, PSF, CNL

Introduction

This hearing was convened in response to an amended application by the tenant to:

- Cancel a 10 Day Notice to End (NTE) Tenancy for Unpaid Rent – Section 46,
- Cancel a 2 Month Notice to End for Landlord's Use – Section 49
- Provide services agreed upon but not provided – Section 65
- Reduce rent for services or facilities agreed but not provided – Section 65

Both parties attended the hearing and provided testimony. The tenant provided the pertinent Notices to End. The landlord was aided by their interpreter. At the outset of the hearing the landlord orally requested an Order of Possession as per the Act.

Issue(s) to be Decided

Are the Notices to End Tenancy valid?
Is the landlord entitled to an Order of Possession?
Is the tenant entitled to the provision of services or facilities required by law?
Is the tenant entitled to a reduction of rent for services or facilities agreed upon but not provided?

Background and Evidence

The parties' undisputed evidence is that the tenancy began on October 31, 2010. Rent in the amount of $700.00 is payable in advance on the first day of each month. In July 2012 the landlord gave the tenant a 2 Month Notice to End with an effective date (automatically adjusted) of September 30, 2012. The tenant did not vacate or file to dispute the Notice to End within the required 15 days to do so. The tenant asked the landlord if they could stay given they had not found a new rental unit. The landlord allowed the tenant another month, but refused to take rent after October 2012 , insisting they vacate so as to accommodate the landlord's use as intended by the 2 Month Notice. The landlord served the tenant with a Notice to End Tenancy for non-payment of rent on November 06, 2012 with an effective date of November 16, 2012. Therefore,

the tenant determined to dispute the 10 Day Notice to End and further has not paid rent for December 2012. The parties were apprised that the landlord is owed rent for November and December 2012 and that the tenant must pay the unpaid rent or the landlord can pursue its satisfaction via an application for dispute resolution.

The tenant further claims that the tenancy agreement includes laundry facilities, cable TV and a functioning stove. The tenant claims that since November 06, 2012 the landlord has removed laundry facilities. The landlord does not dispute the claim, as in their determination the tenancy had already ended, and they were only allowing the tenant to remain for compassionate reasons. The tenant further claims that for 10 months during the tenancy they did not receive cable TV service and notified the landlord to have the matter fixed, but they did not. The landlord denies having been notified of a problem. The tenant testified that the rental unit stove has not worked properly during the entire tenancy – only 2 burners working, and that they notified the landlord. The landlord denies having been notified of such a problem.

Analysis

Based on the testimony of both parties, and on the preponderance of the evidence, I find that the tenant was served with a 2 Month Notice to End tenancy for landlord's Use and I find that notice to be valid. The tenant did not dispute that notice and did not vacate, and was allowed to remain due to the landlord's good will. As a result, the tenant's application to cancel the 2 Month Notice to End dated July 18, 2012 **is hereby dismissed** – the landlord's Notice is upheld. Section 55 of the Act, in part, states as follows: **(emphasis for ease)**

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director **must grant an order of possession of the rental unit to the landlord** if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

Based on the above facts I find that the landlord is entitled to an **Order of Possession.** The landlord elected for the Order to take effect no sooner than **December 31, 2012.**

The parties agreed that the tenant would pay the landlord all arrears of rent from October 01, 2012 to December 31, 2012, and that the landlord would accept any arrears offered by the tenant. The parties were advised that it is available to the landlord to file for dispute resolution for any unpaid rent.

As I have found that the tenancy is ending, I decline to consider the tenant's claims respecting provision of services or facilities required by law. I further find that I prefer the testimony of the tenant in respect to the lack of cable TV service and the improperly functioning stove. As a result I find the tenant is entitled to abatement of rent paid, which I set at a limit of **$400.00**, without leave to reapply. As the tenant's rent is in arrears, I will order that the tenant may deduct this amount from the sum of rent arrears owed to the landlord for the period October 01 to December 31, 2012.

Conclusion

I grant an Order of Possession to the landlord **effective December 31, 2012**. The landlord is being given this Order. The tenant must be served with this Order of Possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I Order that the tenant may **deduct** a one-time amount of **$400.00** from arrears of rent owed to the landlord.

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: December 12, 2012

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RR, FF

Introduction

This hearing was convened by way of conference call in repose to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on April 15, 2012. Mail receipt numbers were provided in the tenant's documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant allowed to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The tenant testifies that this tenancy started on September 01, 2011. This is a fixed term tenancy which is due to expire on September 01, 2012. Rent for this unit is $1,200.00 per month including water, Hydro, heat, cable and internet.

The tenant testifies that the landlord sold the property and the sale had a closing date of April 30, 2012. The tenant states that prior to the sale completing the landlord cashed the tenants rent check for April on the 2nd or 3rd of the month. The tenant testifies that around that time she woke in the morning and found her unit to be freezing cold and there was no hot water. The tenant states she sent the landlord a text message to see what had happened. The landlord replied back saying that the tenant would have to have the utilities put into her own name as the house was sold. The tenant states she replied back to the landlord informing the landlord that these services were included in the tenants rent.

The tenant testifies that the cable and internet services were included in her rent and are detailed as such ion the tenancy agreement. The tenant testifies that her cable and internet were shut off in February, 2012 and these services had to be put into the tenant's name. The tenant seeks to recover these costs for the cable and internet from the landlord. The tenant has provided the cable and internet bills for the months of February, for $54.33, March for $44.80 and April for $44.60. The tenant states she kept the same level of service and used the same internet and cable company.

The tenant testifies that she contacted the gas company but found as the landlord was in arrears with the gas bill the gas company would not let the tenant reconnect the gas and the tenant could not open an account in her name as the tenant was not the owner of the house.

The tenant testifies that she has two small children and was without gas from April 02, to April 11. The tenant testifies that she had to take her children and the three of them had to go and stay at the tenant's ex-husbands one bedroom unit. The tenant states that during

this time the tenant was in contact with the landlord's realtor as the tenant did not know who the new owners were. The realtor managed to get hold of the landlord and told the landlord that if she did not rectify the situation it could affect the sale of the home. The landlord then had the gas turned back on.

The tenant testifies that her children are in Daycare in the area of the tenants unit. Because they had to stay in another part of town the tenant incurred costs in fuel to travel back and forward to Daycare. The tenant seeks to recover the costs for this additional fuel used of $80.00. The tenant has provided receipts for the fuel.

The tenant also seeks to recover the sum of $350.00 for compensation for having to live somewhere else for a period of 10 days and the tenant also seeks compensation of $200.00 for the loss of her facilities and for the upheaval and inconvenience caused by having to stay at her ex-husbands unit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the tenant. I refer the parties to s.27 of the Act which states:

Terminating or restricting services or facilities

27 (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Consequently I find the landlord did terminate a service and facility which were essential to the tenant's use of the rental unit when the gas was turned off in April. I therefore find the tenant has established her claim for compensation to the sum of **$550.00**.

I further find the tenancy agreement states that cable and internet services are part of the rent and therefore I find the tenant has established her claim to recover the sum of **$143.73** paid to have these services put in the tenant's name.

It is also my decision that the tenant incurred costs to transport her children to Daycare over and above what her usual costs would be as the tenant had to live elsewhere for 10 days. Consequently, I find the tenant has established her claim to recover the sum of **$80.00** for these additional journeys.

The tenant has applied to reduce her rent due to the loss of services and facilities. The tenant has filed this claim against her former landlord and has not provided details of her new landlord. The tenant's new landlord must honour the fixed term tenancy agreement in place and cannot alter the terms of this agreement unless the tenant agrees to any alterations. The tenant must therefore determine if her new landlords will honour the terms of the tenancy agreement with regards to the cable and internet service and either reinstate this service in the landlords name or reduce the tenants rent accordingly. The tenant is at liberty to file an application against the new landlords if they fail to honour the tenancy agreement.

As the tenant has been successful with her claim I find the tenant is also entitled to recover the **$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

A Monetary Order has been issued to the tenant for the following amount pursuant to s. 67 and 72(1) of the *Act*.

Compensation	$550.00
Additional travel costs	$80.00
Internet and cable fees	$143.73
Filing fee	$50.00
Total amount due to the tenant	**$823.73**

Conclusion

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **$823.73**. The order must be served on the respondent and is enforceable through the Provincial Court 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: June 04, 2012.

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL; MNDC; RR; FF

Introduction

This is the Tenant's application to cancel a *2 Month Notice to End Tenancy for Landlord's Use of Rental Property* issued August 3, 2012 (the "Notice); for compensation for damage or loss under the tenancy agreement; for a reduction in rent for services agreed upon but not provided; and to recover the filing fee from the Landlord.

The parties and the Landlords' witness gave affirmed testimony at the Hearing.

It was established that the Tenant served the Landlords with the Notice of Hearing documents by registered mail sent August 23, 2012.

Each parties confirmed receipt of the other's documentary evidence. The Landlord provided late evidence to the Tenant and the Residential Tenancy branch, which was not considered in this Decision. The Landlords were provided the opportunity to provide

Issue(s) to be Decided

(1) Should the Notice be cancelled?
(2) Is the Tenant entitled to compensation for loss of cablevision at the rental unit?
(3) Is the Tenant entitled to a rent reduction equivalent to the cost of cablevision?

Background and Evidence

The rental unit is one of 17 apartments in a three storey building. The Landlords purchased the rental property, thereby inheriting the tenancies within the rental property on December 28, 2011.

The Tenant lives on the second floor of the rental property. Her tenancy began on September 1, 1989. Rent at the beginning of the tenancy was $385.00, due on the first day of each month. The Tenant paid a security deposit in the amount of $192.50 at the beginning of the tenancy. Current monthly rent is $532.00. A copy of the tenancy agreement was provided in evidence, which indicates that cable is included in the rent.

The Landlords issued the Notice on August 3, 2012, and on the same day placed a copy in the Tenant's mailbox and slipped another one under her door. A copy of the Notice was provided in evidence.

The Landlords testified that their son s.22 is going to move into the rental unit. Their witness, who is s.22 current landlord, testified that s.22 gave her written notification on August 1, 2012, that he would be ending his tenancy effective November 1, 2012. She stated that s.22 told her that his work hours had been diminished and that he could no longer afford to pay $800.00 rent.

The Tenant testified that she found on-line ads for other units in the building that were available for rent and therefore the Landlords did not require her to move out. The Tenant provided copies of the on-line ads in evidence.

The Landlords testified that there had been two rental units available, but that one was re-rented effective mid-June, 2012 and the other was re-rented for July 1, 2012. Both of these dates were before their son's employment hours diminished.

The Landlords testified that they had much better success using two other on-line sites, but they kept a generic ad open on a third on-line site because they had paid for a year's advertising on that site. They testified that this third site was the site where the Tenant saw the ads. The Landlords stated that they had very few people call as a result of this ad, but that they would tell potential renters that they could go on a waiting list.

The Landlords testified that they had no trouble re-renting suites in the rental property because the suites were well maintained and updated at the end of each tenancy. The male Landlord stated that he could not be more specific about the yearly contract he had with the on-line site (for example, he did not know if the site automatically updated the "available date" for the generic ad, or if it was intended to be for an advertisement for one specific suite or multiple suites as they became available).

The Tenant testified that in February, 2012, her cable provider called her and stated that the Landlords would no longer be paying for cable service at the rental property. The cable provider asked her if she wanted to continue to receive cablevision. The Tenant stated that she took advantage of a limited introductory promotion and signed up with the cable company. She testified that she signed up for "3 tier" service, which was what she had been getting under the tenancy agreement. The Tenant provided copies of the cable bills in evidence. The Tenant seeks reimbursement in the amount of $281.67 for the cost of cable to and including August 20, 2012, and a rent reduction in the amount of $74.98 per month to compensate her for loss of this service.

The Landlords stated that they did not have a copy of the tenancy agreement until the Tenant provided it in her evidence package.

Analysis

In an application such as this, where a Tenant seeks to cancel a Notice to End Tenancy, the burden is on the Landlords to provide sufficient evidence to support the Notice.

I find that the Landlords did not provide sufficient evidence to support the Notice, for the following reasons:

1. The Landlords did not provide copies of the tenancy agreements which they stated were entered into prior to July 1, 2012. These documents were readily available to the Landlords.
2. The on-site ads that the Tenant provided are for rental units available September 15, 2012 and November 1, 2012. The Landlords were vague with respect to specifics about these ads and could not provide details with respect to how the ads were posted. The document that the Landlord provided to support their claim that they had pre-paid for one year's service is dated July 6, 2012, which is 6 days after the date that they testified the last vacancy was filled.

For the reasons noted above, I hereby cancel the Notice and the tenancy will continue.

With respect to the Tenant's application for compensation and a rent reduction for loss of cable service, I find that cable service is included in rent. Section 27 of the Act provides that Landlords may terminate or restrict a non-essential service such as cable, but not without providing 30 days' written notice to the Tenant, and reducing the rent in an amount equal to the reduction in the value of the tenancy agreement resulting from that termination or restriction.

Based on the documentary evidence and oral testimony provided, I find that the Landlords did not comply with Section 27 of the Act and that the Tenant has suffered a loss as a result. However, the Tenant did not provide sufficient evidence that the cable service she was receiving under the tenancy agreement was more than "basic" service, which is generally $35.00 per month. The Tenant provided invoices and a breakdown of the amounts she has paid for "3 tier" service, including a limited introductory promotion. I allow this portion of the Tenants claim, calculated as follows:

Billing period	Amount paid
March 1 – 20, 2012 (promotion)	$14.69

March 21 – April 20, 2012 (promotion)	$22.34
April 21 - May 20, 2012 (promotion)	$22.34
May 21 to June 20, 2012 (promotion)	$22.34
June 21 to July 20, 2012	$35.00
July 21 to August 20, 2012	$35.00
Total compensation	**$151.71**

In addition to the monetary compensation set out above, I order that rent be reduced by **$35.00** a month effective October 1, 2012.

The Tenant has been successful in her Application and I find that she is entitled to recover the cost of the filing fee from the Landlords.

Pursuant to the provisions of Section 72 of the Act, the Tenant may deduct her monetary award from future rent due to the Landlords. For clarity, rent for the month of October will be **$295.29** ($532.00 - $151.71 - $35.00 - $50.00). Rent for subsequent months will be **$497.00** ($532.00 - $35.00).

Conclusion

The Tenant's application to cancel the *2 Month Notice to End Tenancy for Landlord's Use of Property*, issued August 3, 2012, is granted.

The Tenant has established a monetary award in the amount of $236.71 and a rent reduction effective October 1, 2012, in the amount of $35.00 for loss of cable facilities. The Tenant may deduct her monetary award from future rent due to the Landlord. For clarity, **rent for the month of October will be $295.29, and for subsequent months will be $497.00.**

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: September 21, 2012.

Residential Tenancy Branch