



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: OPR, RP, & MND.

Introduction:

This hearing dealt with applications by both the tenant and the landlord. The tenant's application was heard on July 29, 2008 and at the end of the hearing I Ordered that the continuation of the tenant's application to be joined with the landlord's application and heard on August 22, 2008. Both parties appeared for both hearings and were provided the opportunity to be heard and respond to the evidence of the other party.

Issues to be Determined:

The issues I must determine in this dispute are:

1. Whether the landlord has responded reasonably to the tenant's request for repairs;
2. Whether the landlord should be Ordered to make repairs to the rental unit;
3. Whether the tenant is entitled to a rent reduction due to loss of services or facilities related to the alleged repairs;
4. Whether the landlord's Notice to End Tenancy due to non-payment of rent should be upheld or set aside; and
5. What the material terms of the tenancy agreement are between the parties and the rate of the monthly rent.

Background and Evidence:

This tenancy began in approximately July of 2004. Originally the monthly rent was set at \$1,000.00 per month. There was no security deposit paid and the parties did not enter into a written tenancy agreement or complete a move in condition inspection form. It appeared that the relationship was initially friendly but over time has significantly deteriorated surrounding issues of repairs and maintenance of the rental unit.

While the tenant presented several aspects of the rental unit's condition as problematic, the main issue driving this dispute is the lack of an operational gas stove. From the statements of the parties it appears that the other issues of maintenance have been addressed or are in the process of being addressed. The main contention is the repair of the oven.

Originally, it appears that the oven stopped working in December 2007 at which time it was replaced by the landlord. However, problems have persisted with the oven since early 2008 from which it has not been operating at all.

The tenant is also requesting that the furnace be serviced, the chimney cleaned, outstand yard maintenance be completed and the gutters cleaned out. Over the past year the tenant's demands for repairs and the landlord's inattention or frustration with these demands has deteriorated the relationship to the point where the landlord hired Coronet Property Management Ltd., referred to as the landlord, to take over management of the tenancy.

I accept that the change in management has not improved the situation and I accept the evidence of the landlord that the tenant has been uncooperative in his attempts to address her issues. However, I also noted that the landlord, in his frustrations, has added to the conflict rather than help resolve it.

The new relationship between the tenant and the landlord was severely undermined by the disagreement of what the monthly rent is. The landlord received information from the owner that the rent was \$1,000.00 monthly while the tenant maintains it is \$800.00. This resulted in the landlord issuing the ten day Notice to End Tenancy due to non-payment of rent.

The landlord also communicated significant frustration with the tenant's interference with allowing the repairs to be completed. He suggested that the tenant makes herself unavailable and is always questioning the tradespersons selected by the landlord.

Analysis:

From the evidence presented by the parties, I am satisfied that in December 2004 the landlord agreed to reduce the rent to \$800.00 per month. I am also satisfied that the landlord has been accepting \$800.00 per month since then. Therefore, I find that the parties agreed to the reduction in rent and I find that the monthly rent is set at \$800.00 per month.

As a result I find that the Notice to End Tenancy is null and void. This tenancy will therefore continue. The landlord's application is therefore dismissed.

With respect to the issues surrounding the condition of the rental unit I find that the owner failed to met his responsibilities as a landlord and did not address the tenant's concerns and requests in a reasonable timeframe. However, I also accept that the tenant has frustrated the situation by questioning the landlord's choice of tradespersons to complete the work and apparent difficulty in finding times that the tradespersons can enter the unit to complete the repairs. The tenant is reminded that it is not her role to select tradespersons and that is the decision of the landlord. The tenant must also make all arrangements necessary to facilitate the speedy remedy of the repairs she has requested from the landlord. The tenant is also required by the *Act* to provide the landlord with a copy of the entry key to the rental unit.

Because of the lack of communication between the parties and the confusion respecting the terms of the tenancy agreement this situation has carried out longer than normal. Both parties seemed to understand that this situation would not have been as problematic if the terms of the tenancy had been in writing. Both parties agreed in the hearing to put the terms of the tenancy into writing and to work towards a more cooperative relationship. To assist the parties in establishing a new relationship and to address the repair of the oven.

As such, I make the following Orders pursuant to section 65 of the *Act*:

1. I Order that the tenant provide the landlord, as noted above, with a copy of the keys to the rental unit;
2. I Further Order that once the landlord receives a copy of the keys to the rental unit, the landlord has one month to have the oven repaired in the rental unit. If the oven is not repaired within one month the tenant may file a new application requesting a rent reduction due to loss of services; and
3. I Order that the tenant and the landlord enter into a written tenancy agreement, with the standard terms as provided in the *Residential Tenancy Act* and regulations, with the monthly rent set at \$800.00 per month.

In addition, I recommend that both the landlord and the tenant review section 1 of the *Residential Tenancy Policy Guidelines Manual* which sets out the responsibilities of each regarding maintenance and upkeep of the rental unit.

Dated September 19, 2008.