



Dispute Resolution Services

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

Decision

Dispute Codes: CNR, RP, FF

Introduction

This hearing dealt with the tenants' application to cancel two *10 Day Notices to End Tenancy for Unpaid Rent and Utilities* (the Notices) and request the landlord make repairs. The tenants were also requesting recovery of the filing fee. Both parties appeared at the hearing and had an opportunity to be heard and respond to the other party's submissions.

Issue(s) to be Decided

1. Whether there are grounds to cancel the Notice.
2. The repairs or actions the landlord must take to repair the rental unit.
3. Award of the filing fee.

Background and Evidence

I heard undisputed testimony that the tenants rent two units in the three-unit residential property. The tenancies commenced in 2003 and approximately two years ago, respectively. The tenants are required to pay the landlord 70 percent of the hydro and gas bills for the property. The landlord sends letters to the tenants every month advising the tenants of their share of the utility charges. The landlord sent a letter to the tenants on November 4, 2008 advising of their utility charges. By December 9, 2008 the tenants had not paid the utilities demanded in the November 4, 2008 letters and the landlord served the 10 Day Notices by regular mail. On December 19, 2008 the landlord deposited the tenant's cheque for the outstanding utilities.

The tenant was of the position that the landlord has been serving him with 10 Day Notices at the same time the landlord sends the demand to pay utilities. The landlord was of the position that the 10 Day Notices pertain to utilities from the previous month and that for efficiency the landlord includes a statement concerning the current month's utility charges.

The tenant was also requesting that the landlord perform the following actions:

1. Landlord to provide keys for the back door. The tenant claims that he was not provided keys to the rental unit and had rekeyed the front door himself; however, he does not have keys to the back door.
2. Landlord to provide the code for the alarm system.
3. Landlord to inspect the condition of the carpet.
4. Landlord to repair the heating system.
5. Landlord to repair the broken/cracked window in the door.

The landlord responded to the tenant's concerns, as follows:

1. The landlord does not have any keys for the back door as they were previously given to the tenant by a former landlord.
2. The landlord will set up a code for the tenant to use with the alarm system.
3. The landlord is concerned about replacing the carpets as the tenants smoke in the rental unit.
4. The landlord is aware of problems with the heating system and is waiting for the owner to authorize the repair which is expected to cost approximately \$2,000.00.
5. The landlord is aware of a crack in the window.

Analysis

The Act provides that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is

given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice to end the tenancy. Upon review of the evidence submitted for the hearing, I prefer the landlord's position that the Notices to End Tenancy relate to a previous month's demand for utilities and that the Notices are accompanied by demands to pay the current month's utilities. Therefore, I am satisfied that the landlord had the right to issue the Notices on December 9, 2008 as it had been more than 30 days since the landlord demanded payment of the utilities.

Where a tenant receives a 10 Day Notice, the tenant has five days to either pay the outstanding amount on the Notice or dispute the Notice. If the tenant pays the outstanding amount within five days the Notice is automatically cancelled. In this case, the tenants disputed the Notices and paid the outstanding utilities within five days. Since the Notices were mailed to the tenants, the Act deems that the tenants received the Notices five days later on December 14, 2008 and the tenants had until December 19, 2008 to pay the outstanding rent. I find that the tenants paid the outstanding rent by December 19, 2008 and the Notices are automatically cancelled.

The tenant was cautioned during the hearing that paying the utilities more than 30 days after demand is made for payment constitutes late payment of rent and that the Act permits a landlord to end a tenancy where there is repeated late payment of rent.

With respect to the tenants' request for repairs, I make the following findings.

Keys

The Act requires a landlord to rekey locks and provide a tenant with new keys if the tenants requests this be done at the start of the tenancy. Based on the balance of probabilities, I am satisfied that the tenant asked for keys at the commencement of the tenancy. Therefore, **I order the landlord to provide the tenants with a key to the back door within 30 days after the date of this decision.**

Alarm code

The landlord agreed to set up a code for the alarm for the tenants to use. **The landlord is ordered to provide an alarm code to the tenants within 30 days from the date of this decision.**

Carpet / Cracked Window / Inspection

The tenant has identified that there are potential repairs required to the rental unit and that the landlord is aware of these issues. I find that it is the landlord's obligation to respond to tenants' concerns related to repairs or damages to a rental unit. As the landlord acknowledged that the rental unit had not been inspected in approximately 2 – 3 years, I order the landlord to attend to the rental unit in order to conduct an inspection of the rental unit and determine the condition of the rental unit, including the carpeting and cracked window. The landlord is reminded that the landlord has the obligation to ensure the rental unit is repaired and maintained so that it meets health, safety and building laws. The landlord must also ensure that the rental unit is suitable for occupation by a tenant, having regard for the age, character and location of the rental unit. The landlord and tenant are encouraged to set up a mutually agreeable time for the inspection; however, if the parties cannot set up a mutually agreeable time, the landlord may inspect the rental unit without the tenant provided adequate notice is given to the tenant in proper form. In any case, **I order the landlord to inspect the condition of the rental unit no later than 30 days after the date of this decision.**

Heating system

As there is no dispute that the heating system is in need of repair, the landlord is ordered to repair or replace the heating system, as necessary. In recognition that the system is providing heat at this point and the repairs are expected to cost approximately \$2,000.00 **I order the repairs to the heating system be completed within 60 days of this decision.**

Should the landlord fail to comply with these orders, the tenant is at liberty to make another application for dispute resolution.

As I am satisfied there was outstanding rent at the time the Notices to End Tenancy were issued and the tenants subsequently paid the outstanding rent, I do not find merit in the tenants' claim to cancel the Notices. However, I do find some merit in the tenants' concerns over the lack of inspection and maintenance. Therefore, I will permit the tenants to recover one-half of the filing fee paid for this application. The tenants may make a one-time deduction of \$25.00 from a subsequent month' rent payment in satisfaction of this award.

Conclusion

As the tenants paid the outstanding rent within five days of receiving the Notices the Notices are automatically cancelled. The landlord must provide keys to the back door, provide an alarm code, repair the heating system and inspect the condition of the rental unit as so ordered above. The tenant may make a one-time deduction of \$25.00 from a subsequent month's rent with respect to the filing fee paid for this application.

January 15, 2009

Date of Decision

Dispute Resolution Officer