



Dispute Resolution Services

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

Decision

Dispute Codes: CNR, RP

Introduction

This hearing dealt with the tenant's application to cancel a Notice to End Tenancy for unpaid rent and orders requiring the landlord to make repairs to the property. 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 set aside the Notice to End Tenancy.
2. Repair issues and appropriate Orders for the landlord.

Background and Evidence

Upon hearing undisputed testimony, I find that the tenancy commenced July 26, 2008 and the tenant is required to pay rent in the amount of \$975.00 per month and 60% of gas and hydro bills. The landlord has been accepting rent from the tenant in two partial payments per month.

The tenant provided the landlord with a cheque in the amount of \$576.00 dated December 15, 2008. The landlord deposited the cheque December 24, 2008 and it was returned for insufficient funds. On January 12, 2009 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid rent indicating rent of \$576.00 was owed for December 2008, rent of \$975.00 was owed for January 2009 and utilities of \$215.00

were demanded on January 12, 2009. The tenant disputed the Notice with 5 days of receiving the Notice.

The parties agreed that the tenant had paid the landlord \$1,250.00 on January 21, 2009 and paid her February 2009 rent. The tenant would pay the remaining \$516.00 in rent and utilities over three installments of \$172.00 per month starting March 2009. The landlord could not recall if he had communicated to the tenant that he was accepting the payment for February 2009 rent for use and occupation only; however, during the hearing the landlord was agreeable to the tenant paying the arrears over three installments and continuing the tenancy.

During the hearing, the landlord was informed of the requirement to demand payment for utilities in writing at least 30 days prior to issuing a 10 Day Notice for unpaid utilities.

The tenant identified four issues in seeking Orders for repairs to the property:

1. That separate controls for the furnace be provided to her unit and the basement unit.
2. That the stove be repaired or replaced as one stove element is not working and the lower coil is not working in the oven.
3. That the bathroom sink is leaking water underneath the sink.
4. That the kitchen sink cabinet is rotten from months of the sink leaking.

The landlord agreed to attend to the unit within one week to: repair or replace the stove; repair the bathroom sink and repair the rotten cabinet under the kitchen sink.

With respect to the control for the furnace, the tenant demanded the right to control her heat. The tenant explained that at times there was too little heat and at times the heat was too high and she had to open windows to let some heat out. The tenant claimed that she had a friend of hers had advised her that the control for the furnace could be

separated for each unit at an undetermined cost. The landlord had agreed that the thermostat was in the basement suite and that the basement suite tenant was difficult to get a hold of at times but explained that the tenant had two space heaters for her use.

The tenant sought to amend her Application for Dispute Resolution to request a rent reduction if she was not provided with a separate controller for the furnace. The tenant's request was denied and the tenant is at liberty to make a separate application for that issue; however, I would encourage the tenant to wait until the landlord has installed the programmable thermostat, as I have ordered below, so that she can sufficiently determine whether an issue remains.

The tenant also indicated that there were other relatively minor deficiencies in the rental unit. The tenant was advised to prepare a written list for the landlord and provide him with an opportunity to make any necessary repairs.

Analysis

Since I heard that the tenant paid rent for February 2009, which is the month following the month the tenancy was to end pursuant to the Notice to End Tenancy, and the landlord accepted the payment for February 2009 rent without clear evidence the landlord was accepting it for use and occupation only, I find that the landlord reinstated the tenancy. By reinstating the tenancy, I have found sufficient grounds to set aside and cancel the Notice to End Tenancy served January 12, 2009. For clarity, the tenant still owes the landlord the shortfall of \$516.00 ($\$1,551.00 + 215.00 - \$1,250.00$); however, the tenancy is not ending at this time.

As the parties have agreed that the tenant will make partial payments of \$172.00 for three months starting March 1, 2009, on top of the rent owing and utilities owing under the tenancy agreement, I ORDER the tenant to comply with this arrangement and if the tenant does not fulfill her part of the agreement, the landlord is at liberty to issue another

Notice to End Tenancy for unpaid rent or utilities and make his own Application for Dispute Resolution in order to obtain a Monetary Order and/or an Order of Possession.

With respect to the heating control, as the tenant was told during the hearing, the Act does not specifically provide that a tenant is entitled to her own heat controller. Rather, the tenant is entitled to an adequate amount of heat so that the rental unit is inhabitable. I do not find that the only way to provide the tenant with a sufficient amount of heat is to give her a separate controller for the furnace. The landlord can ensure that the furnace operates to provide sufficient heat to both units. If the tenant requires supplemental heat she can use her space heaters. Therefore, I ORDER that the landlord install a programmable thermostat for the furnace that is locked or has a locking case installed around the thermostat that is only accessible by the landlord. The thermostat should be set according to mutual agreement between the tenants; however, if mutual agreement cannot be reached then the settings shall be as follows: 18 C between the hours of 10 pm and 7 am; and, 20 C from 8 am to 10 pm, everyday. The landlord has until February 28, 2009 to comply with this ORDER.

With respect to the other repair issues, I make the following ORDERS upon the landlord:

1. Repair the non-functioning components of the range no later than February 28, 2009.
2. Repair the leaking bathroom sink no later than February 28, 2009.
3. Replace the rotten material of the kitchen sink cabinet no later than February 28, 2009.

Conclusion

The tenancy was reinstated and the tenancy continues. The tenant is required to increase her rent payments by \$172.00 for three months commencing March 1, 2009 to pay her rental arrears.

The landlord was given Orders to make four repairs, as described above, and complete the repairs no later than February 28, 2009.

February 18, 2009

Date of Decision

Dispute Resolution Officer