



Dispute Resolution Services

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

DECISION

Dispute Codes: CNL, RP, ERP and FF

Introduction

This application was brought by the tenants seeking to have set aside a 60-day Notice to End Tenancy for landlord use served on February 8, 2009. The tenants' also request orders for repairs and emergency repairs and recovery of the filing fee for this proceeding.

Issues to be decided

This application requires a decision on whether the Notice to End is lawful and valid and should be upheld or set aside accordingly, whether orders for repairs or emergency repairs are warranted and whether the applicants are entitled to recover the filing fee from the landlord.

Background and Evidence

This tenancy began June 1, 2006. Rent is \$1,000 per month and there is no security deposit.

During the hearing, the landlord gave evidence that he had served the notice because the house in which he currently resides is being sold and he will be moving in to the subject rental unit.

While neither party provided a copy of the Notice to End Tenancy (subsequently faxed), they concurred that it set an end date that was earlier than the two full months following the next rent due date as required by section 49(2)(b).

Section 53(2) of the Act says that, "If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section." Therefore the Notice to End Tenancy is amended to reflect an end of tenancy date at April 30, 2009.

The tenants also sought orders for repairs and emergency repairs including a problem with rats, the septic system, black mold, carpets, door and window locks, the porch deck and roof, water pressure, smoke detectors, bathroom sink piping, gutter repair, one oven element, a hole in the storeroom roof and the need for chimney cleaning. The tenants submitted written notification of these items by letter of February 11, 2009.

During the hearing, the tenants also requested monetary compensation for cleaning, yard work and cleanup and other repairs they had done to the rental building.

Analysis

Section 49(2)(c) of the *Act* permits a landlord to end a tenancy with two months notice if the landlord or a close family member intends in good faith to move in to the rental unit. I find that the Notice to End Tenancy is valid and lawful and I decline to set it aside.

As to the tenant claims for repairs and emergency repairs, I find that those items that fall under the general category of repairs are largely moot given that the tenancy will be ending within six weeks.

Also, the parties must be aware that, as the tenants' request to the landlord for repairs of February 11, 2009 follows their receipt of the Notice to End Tenancy and refers to problems that have existed for some time.

However, that would not excuse the landlord from any items that are genuine emergency repairs as defined at section 33 of the *Act*.

I hereby authorize and order that the landlord must attend the rental no later than March 25, 2009 and assess and remedy those items raised by the tenants that clearly require emergency attention to assure the safety of the tenants to the conclusion of the tenancy.

As to the tenants claim for monetary compensation for work done, as they have not made such monetary claims in their application, I must dismiss them. The tenant's remain at liberty to file for dispute resolution to address those claims, but as they were cautioned at the hearing, they must provide evidence of the landlord's consent for such work and agreement as to cost.

Conclusion

1. The tenants' claims for general repairs as dismissed as moot in view of the imminent conclusion to this tenancy.

2. The landlord must attend the rental unit no later than March 25, 2009 to see to the remedy of any of those matters that reasonably represent a compromise of the health or safety of the tenants;
3. The tenants' claim for monetary compensation is dismissed as they did not make such claims on their application and have provided no evidence of the work or the landlord's approval of it or agreement to compensate them.

As the application has succeeded in part, the tenants may recover half of the filing fee for this proceeding by withholding \$25 from rent owed.

March 18, 2009

Dispute Resolution Officer