



Dispute Resolution Services

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

DECISION

Dispute Codes: CNC, RP, ERP, PSF, MNDC, OPC, RR, and FF

Introduction

These applications were brought by both the landlord and the tenants.

By application of February 6, 2009, the landlord seeks an Order of Possession pursuant to a Notice to End Tenancy for cause served by posting on January 23, 200, and recovery of the filing fee for this proceeding.

By application of January 29, 2009, the tenants sought to have the same notice set aside, orders for repairs, emergency repairs and services or facilities, monetary compensation and a rent reduction and recovery of the filing fee for this proceeding.

At the commencement of the hearing, the parties noted that the tenants had not checked off the box indicating that they wished to contest the Notice to End Tenancy. Given that the application was made five days after the notice was posted, I found the error was inadvertent and exercised my discretion under section 64(3)(c) of the *Act* to permit the tenants to amend their application accordingly.

Issues to be decided

These applications require a decision first on whether the Notice to End Tenancy should be upheld or set aside and whether the tenants are entitled to the repairs orders and compensation claimed.

Background and Evidence

This tenancy officially began October 1, 2008, but in order to assist the tenants, the landlord gave them permission to move some of their belongings in on September 27, 2008 on the understanding that some of the clean up and finishing touches were still going on. The tenants, however, moved in and took up residence. They subsequently refused to pay the four days pro-rated rent as they had not been happy with the timing of the finishing work.

Rent is \$975 per month and the landlord holds a security deposit of \$487.50.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served following an altercation between the female tenant and another female tenant on January 4, 2009. According to the landlord, the investigating police officer had found the parties equally responsible and laid no charges. The landlord stated that the other tenant had not been evicted because she had not, at the time, signed the same "Crime Free Housing" addendum that the subject tenants had and had a longer, incident-free history in the complex.

The tenants gave evidence that they had some concerns about the way wiring was strung in the basement but the landlord stated it had been viewed and found satisfactory by a building inspector.

The tenants suffered some disruption with the kitchen cold water tap from December 30, 2008, a problem found beyond the expertise of the maintenance man on January 4, 2009, and the plumber who was called immediately was unable to attend to it for two weeks. However, the landlord notes there were two other sources of cold water.

On January 23, 2009 the furnace broke down, was repaired the same day, and again the day following when the first repair had apparently failed. As a consequence, one pipe froze but was repaired.

The tenants' other concerns were cosmetic or less pressing and I accept the evidence of the landlord that these have been, and continue to be addressed as priorities permit. She referred to another unit that had experienced water leakage as an example of the demands that had caused the more minor repairs to be postponed.

Analysis

As to the Notice to End Tenancy, I find that it should be set aside. Given that there is no clear evidence which of the tenants instigated the disturbance and given that the other tenant has been given benefit of the doubt, I find the subject tenant should be given the same benefit.

As to the tenants claims, I find that they have suffered some inconvenience. However, I find that they have already been adequately compensated by the four rent free days they enjoyed before the tenancy began.

I further find that both parties should remain responsible for their own filing fees.

Conclusion

Accordingly, both applications are dismissed without leave to reapply and the tenancy continues as agreed on the rental agreement.

February 23, 2009

Dispute Resolution Officer