

DECISION

Dispute Codes CNL OLC RP

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to cancel a notice to end tenancy for the Landlord's use of property and to obtain an Order to have the Landlord comply with the Act and make required repairs to the rental unit.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on December 16, 2009. The Landlord confirmed receipt of the hearing package which included copies of the Tenant's evidence.

The Landlord, his Agent, and the Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Has the Tenant proven entitlement to Orders under sections 32, 49, and 62 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony was the fixed term tenancy began on April 1, 2007 and switched to a month to month tenancy after March 31, 2008. The monthly rent is payable on the first of each month in the amount of \$800.00 and a security deposit of \$400.00 was paid on April 1, 2007.

The Tenant testified that she did not receive a copy of the Landlord's evidence.

The Landlord argued that he sent the Tenants copies of his evidence in the regular mail however the Landlord could not provide testimony in relation to the date the alleged package was mailed to the Tenants.

The Tenant confirmed that she was served a 2 Month Notice to End Tenancy for Landlord's use on December 1, 2009 and that the copy provided in her evidence is a true copy of the Notice she received, which was unsigned and undated.

The Tenant testified that she has had several verbal conversations with the Landlord about required repairs and that in the past the Landlord has been very responsive and attended to the required repairs however there are two items outstanding. The first item is the thermostat control for the furnace and the second has to do with the fireplace chimneys.

The Tenant argued that there is only one furnace in the house and the thermostat control is located in the upstairs rental unit so when they require the heat to be turned on they have to disturb the upstairs tenants and request them to turn the heat on. The Tenant testified that they had also had to contact the Landlord in the past to request the heat to be turned on. The Tenant argued that they pay 40% of the utilities and the upstairs tenants pay utilities so the upstairs tenants like to heat their space by using the wood fireplace to save the utility costs which leaves the Tenants without ample heat in the basement.

The Agent advised that the Landlord has looked into having a separate thermostat installed however the house and furnace are too old to accommodate such an installation. The Agent argued that it would cost too much to change the furnace system to allow the lower Tenants control of the heat.

The Tenant is seeking to have the Landlord repair the chimneys as currently when the upstairs tenants start fires smoke enters the chimney and comes into the Tenants' rental unit in the basement even when the flue in the lower suite is closed. The Tenant argued that the Landlord has had someone look at the chimney and they removed the roof cap however the problem has not been corrected.

The Agent testified that these Tenants have never informed the Landlord of the problem with the fireplaces. When asked why the Landlord had someone check on the chimney the Landlord stated that he had been advised of the smoke problem by the upstairs tenants.

Analysis

Upon review of the Notice to End Tenancy, I find the Notice not to be completed in accordance with the requirements of the Act. Upon consideration of all the evidence presented to me, I hereby cancel the 2 Month Notice to End Tenancy which was served to the Tenants on December 1, 2009.

The Landlord's documentary evidence all pertains to the Landlord's issuance of the Notice to End Tenancy. Given that I have cancelled the notice the issue of whether the Tenants received the Landlord's evidence is now mute.

Section 32 of the Act provides that a Landlord must provide and maintain the rental unit in a state of decoration and repair that complies with health, safety and housing standards required by law.

The evidence supports that there is one thermostat to control heat in two separate rental units with the upstairs tenants having control of the heat in the lower rental unit. I find that in circumstances where tenants are responsible for paying utilities and one rental unit has control of the thermostat which heats the other rental unit restricts one rental unit from having a properly heated rental unit.

Based on the aforementioned I hereby order the Landlord to have a programmable thermostat installed and programmed with temperatures that are mutually agreed upon, in writing, between the upper tenants and the lower Tenants, after which the thermostat is to be encased in a locked cover to prevent either tenant from accessing the thermostat, no later than February 5, 2010.

The testimony confirms that there have been reports of a problem with smoke coming into the rental units when the wood fireplaces are used. Both parties confirmed that the Landlord has had someone attend the rental unit to check the exterior of the chimney and that this person removed the chimney cap, which by the Tenant's testimony, did not correct the problem. Continued usage of a fireplace which is displaying improper ventilation poses a severe health and safety risk.

Based on the aforementioned I hereby order the Landlord to immediately instruct all tenants, in writing, not to use the fireplaces in the rental unit until a written inspection is received and repairs, if required, are completed.

I hereby order the Landlord to have a chimney professional inspect the interior and exterior of the fireplaces and chimneys and provide the Tenants with a copy of professional's inspection report and recommendations no later than February 12, 2010. If, after having the inspection completed, the Landlord chooses not to repair the fireplaces/chimneys the Landlord will be subject to section 27 of the Act which requires a landlord to give 30 days' written notice of the termination of the facility and to reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination.

If the Landlord fails to comply with the above mentioned orders the Tenants will be at liberty to make application for compensation.

Conclusion

The 2 Month Notice to End Tenancy served on the Tenants on December 1, 2009 is hereby **cancelled and is of no force or effect.**

I HEREBY ORDER the Landlord to issue written notification to all tenants, **immediately upon receipt of this decision**, that the fireplaces are not to be used until inspected and cleared for usage by a chimney professional.

I HEREBY ORDER the Landlord to have a chimney professional inspect the interior and exterior of the fireplaces and chimneys in the rental house, provide the Tenants with a copy of professional's inspection report and recommendations, and written notification of the Landlord's intention to either repair the problem or allow the Tenants a reduction in rent, no later than **February 12, 2010.**

I HEREBY ORDER the Landlord to have a programmable thermostat installed and programmed with temperatures that are mutually agreed upon, in writing, between the upper tenants and the lower Tenants, after which the thermostat is to be encased in a locked cover to prevent either tenant from accessing the thermostat, no later than **February 5, 2010.**

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 22, 2010.

Dispute Resolution Officer