



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, ERP, RP, PSF, MNR, MNDC, FF

Introduction

This matter dealt with an application by the Tenants to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, for an Order that the Landlord make emergency repairs and general repairs, that the Landlord provide services and facilities that were agreed to or are required by law, for compensation for emergency repair expenses and for damages or losses under the Act or tenancy agreement as well as to recover the filing fee for this proceeding.

This matter was originally scheduled for hearing on June 1, 2010, however on that day, the Landlord claimed that he had not received the Tenants' evidence package and the Landlord admitted that he had not sent his evidence package to the correct address for Residential Tenancy Branch. Consequently, this matter was reconvened to today's date to give the Parties an opportunity to re-submit their respective evidence packages.

The hearing started at 9:00 a.m. as scheduled, however by 9:10, the Tenants had not dialled into the conference call and as a result, the hearing proceeded in the Tenants' absence.

At the beginning of the hearing, the Landlord said that he served the Tenants with only one Notice which was a One Month Notice to End Tenancy for Cause dated March 24, 2010. The Landlord said he sent this Notice to the Tenants by registered mail and also posted a copy of it on the rental unit door. The Landlord said he did not serve the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent. On April 13, 2010, the Tenants applied to cancel a 10 Day Notice to End Tenancy and in support of that application, the Tenants provided a copy of the One Month Notice to End Tenancy for Cause dated March 24, 2010.

In the absence of a copy of a 10 Day Notice to End Tenancy, I conclude that the Tenants made an error when they applied to cancel a 10 Day Notice instead of the One Month Notice to End Tenancy for Cause. Consequently, the Tenants' application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent is dismissed without leave to reapply.

Given that the Tenants applied to cancel the Notice (although incorrectly) on April 13, 2010, I assume that they received the Notice in early April 2010 (however I make no finding in that regard). Consequently, the **latest** that the Notice could take effect would have been May 31, 2010.



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Section 66(3) of the Act says that the director **may not** extend the time limit for a tenant to apply to cancel a Notice to End Tenancy beyond the effective date of the Notice. Consequently, as the effective date of the Notice has now expired, the Tenants will likely be statute barred from applying to cancel the One Month Notice to End Tenancy dated March 24, 2010.

Given that the Landlord may now make a separate application for dispute resolution to enforce the One Month Notice and that the Tenants are barred from applying to cancel it, it is likely that the tenancy will end. In the circumstances, I find that it would not be appropriate to make an order for repairs or emergency repairs or for the Landlord to provide services and facilities and those parts of the Tenants' application are dismissed without leave to reapply.

The Tenants are at liberty to re-apply for compensation for any repair expenses they have incurred, services or facilities they have lost or damages they have sustained if the Landlord has breached the Act or tenancy agreement as they claim. However the Tenants' application to recover the filing fee for this proceeding is dismissed without leave to reapply.

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: July 21, 2010.

Dispute Resolution Officer