

DECISION

Dispute Codes: CNC, RP

Introduction

This application was brought by the tenants seeking to have set aside a Notice to End Tenancy for cause – breach of a material term of the rental agreement - dated August 10, 2010 and setting an end of tenancy date of October 1, 2010. The tenants also sought an order for repairs, in particular, repair to a non-functioning heat pump.

Despite having been served with the Notice of Hearing sent by registered mail on or about August 17, 2010, the landlord did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

Issues to be Decided

This matter requires a decision on whether the Notice to End Tenancy should be set aside or upheld and whether an order for repairs is warranted.

Background and Evidence

This tenancy began on November 1, 2008. Rent is \$1,500 per month and the landlord holds a security and pet damage deposits of \$750 each, the first paid on November 1, 2008 and the second paid on or about November 15, 2008.

During the hearing, the tenants gave evidence that they had been served with a Notice to End Tenancy for cause on August 10, 2010. The landlord had received notice on August 5, 2010 that the utilities had not been paid and placed a call to the tenants. As he did not hear back from them, he issued the Notice to End Tenancy; however, the tenants submitted that the payment had been made the day before.

The landlord's written submission stated that the only issue he had with the tenants was the payment of utilities and rent on time and the tenants responded that it was their intention to comply.

The tenants expressed concern that they entered into the rental agreement on the understanding that the rental unit had a heat pump supplemented by an oil furnace and a wood burning fireplace. However, the heat pump has not been functional and, with a supplementary electric heater provided by the landlord, they believe their utilities bills have been substantially higher than anticipated.

The tenants expressed some concern with repairs done by the landlord including installation of a new thermostat with wire running on the outside of the wall and the fact that the landlord cleaned the chimney and the dryer exhaust system himself, and they are concerned that neither may have been done properly. Beyond that, they acknowledged that the landlord had responded to other concerns to their satisfaction.

Analysis

In the absence of the landlord to elucidate the cause behind Notice to End Tenancy, I find that it should be set aside.

In the absence of third party professional evidence as might be obtained in consultation with a fire inspector or building inspector or professional home inspector, I am not persuaded there is sufficient cause for me to order repairs in this matter.

Similarly, I do not find it within my jurisdiction to order the landlord to replace or repair the heat pump provided there is found to be a safe heating system and I note that they rental agreement includes the notation, "as is."

However, I would remind the landlord of the obligation under section 32 of the *Act* to maintain the rental unit in a state of repair that "complies with the health, safety and housing standards required by law." Written evidence indicated that the tenants had once withheld rent due to repair issues and I would remind them that they are not permitted to do so under section 26 of the *Act*.

Conclusion

The Notice to End Tenancy of August 10, 2010 is set aside and the tenancy continues. As the tenants' conduct contributed to the issuance of the Notice to End Tenancy, I find that they should remain responsible for their own filing fee.

October 4, 2010