



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND ORDERS

Dispute Codes DRI, ERP, FF

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking to dispute a notice of rent increase, to have orders for the Landlord to make emergency repairs to the site, and to recover the filing fee for the Application.

The Tenants appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenants testified that they personally served the Landlord with the Notice of Hearing and Application for Dispute Resolution on November 3, 2010. Despite this the Landlord did not appear at the hearing. I find the Landlord has been duly served under the Act.

Issues(s) to be Decided

Are the Tenants able to dispute the notice of rent increase?

Should the Landlord be ordered to make emergency repairs to the site?

Background and Evidence

The Tenants testified that approximately three years ago the Landlord had a backhoe type machine working on the subject rental site. The work was required to repair water lines going to the site adjacent to the subject site. The machine damaged the Tenants' driveway and the excavation left a sinkhole on the site.

The Tenants testified that they have been told by the Landlord, that the Landlord is not responsible to repair this.

The Tenants testified that they have received a notice of rent increase for January 1, 2011, of \$8.00 per month. They do not want to pay this, as the Landlord has failed to do the repairs to their site.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities I find as follows:

I find that the Landlord has breached the Act by failing to do the repairs to the rental site. The Landlord is responsible under the Act to provide and maintain the site in a reasonable state of repair. Furthermore, I find that the work undertaken by the Landlord to work on the water lines caused damage to the subject site, which the Landlord must repair.

Under the Act the Landlord is allowed to increase rent in accordance with the Act and regulations. If the rent increase conforms to the Act and regulations, the Tenants are unable to dispute the notice of rent increase. Here the Tenants had no evidence the rent increase did not conform to the Act or regulations. However in this circumstance, I find the Tenants should have applied for a rent reduction for repairs or facilities agreed upon, but not provided by the Landlord, rather than to dispute the rent increase. Therefore, I allow the Tenants to amend their Application accordingly.

This leads me to make the following Orders:

As soon as the weather permits, the Landlord must repair (or if applicable repave) the Tenants' driveway and the sinkhole to at least the condition these were in prior to the damage done while working on the water lines.

Beginning on January 1, 2011, and until the repairs ordered above are completed, the Tenants may reduce their monthly rent by \$8.00 per month.

As the Tenants have been successful in their Application, I also order that they recover the filing fee for the Application by deducting the sum of \$50.00 from one month of rent.

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: November 25, 2010.

Dispute Resolution Officer