Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes   CNR, OLC, ERP, RP, PSF

Introduction

This was an application by the tenants to cancel Notices to End Tenancy for unpaid rent, for an order that the landlord comply with the Act, for a repair order and an order that the landlord provide services or facilities. The hearing was conducted by conference call. The named tenant, the landlord and the landlord's son participated in the hearing.

Issues(s) to be Decided

Should the Notices to End Tenancy dated November 1, 2010 and November 15, 2010 be cancelled?

Background and Evidence

The rental unit is a house in Surrey. The landlord issued a Notice to End Tenancy dated November 1, 2010. The tenant applied to dispute the Notice to End Tenancy. The notice was defective in that it failed to say when the tenants were required to move out of the rental unit. The landlord served a second Notice to End Tenancy for unpaid rent dated November 15, 2010 intended to replace the first Notice to End Tenancy. The tenant submitted a copy of the second Notice to End Tenancy and requested that the application be considered to constitute a valid dispute as to both Notices.

The parties did not produce a copy of a written tenancy agreement. The tenant testified that the monthly rent is $1,100.00 and the tenant paid a security deposit of $1,000.00

when the tenancy began in April, 20008. In the first Notice to End Tenancy the landlord claimed that the tenants failed to pay rent in the amount of $1,800.00 that was due on November 1, 2010. The Notice said the tenants failed to pay $600.00 for October and $1,200.00 for November. The second Notice again said the tenants failed to pay rent in the amount of $1,800.00 due on November 1, 2010, but the second Notice said the tenant failed to pay $600.00 in October and $600.00 in November.

The tenant provided copies of cheque history of payments by the Ministry of Housing and Social Development. The records show monthly payments to the landlord from May, 2010 to and including November, 2010 in the amount of $600.00. The tenant testified that in addition to the $600.00 payment from the ministry, she paid the landlord a further $500.00 in cash each month. She said that the landlord has never given her a receipt for these payments.

The landlord disputed the tenant's testimony, but he did not provide any documents, such as an account record of rent receipts, a ledger of payments, bank deposit records or copies of rent receipts to show the history of rent payments during the tenancy.

The tenant produced photographs of mould and what she described as the effects of water leaking through the roof of the rental unit.

The tenant requested that the landlord provide her with receipts for rental payments.

Analysis and conclusion

 In the absence of any documents from the landlord to support his position I find that the landlord has failed to show that the tenant owes rent for the periods stated in the two Notices to End Tenancy. I order that the Notices to End Tenancy dated November 15, 2010 and November 1, 2010 be and are hereby cancelled. The tenancy will continue.

I further order and direct that the landlord provide rent receipts to the tenant for all cash payments of rent given to the landlord. The receipts must be given to the tenant at the time that the payments are received by the landlord.

I accept the tenant's testimony that the landlord has neglected or refused to fix the leaking roof on the rental property. I order that the landlord hiring a roofing contractor to inspect the roof and perform the repairs necessary to prevent leaks into the rental unit. I grant the tenant leave to reapply for further relief, including a rent reduction in the event that the repairs are not carried out by January 31, 2010.

The tenant is entitled to recover the $50.00 filing fee for this application. She may deduct the said sum from the next instalment of rent due to the landlord.

Dated: December 20, 2010.   _____