



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, OLC, ERP, RP, RR, FF

Introduction

This conference call hearing was convened in response to the tenant's application for a cancellation of a Notice to End Tenancy; for a Monetary Order for money owed or compensation under the Act; to have the landlord comply with the Act; to have the landlord make emergency repairs for health or safety reasons; to have the landlord make other repairs to the unit; to allow the tenant to reduce rent; and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They presented oral evidence and confirmed receipt of the material they intended to submit at the hearing.

Issue(s) to be Decided

Is the tenant entitled to a cancellation of the Notice to End Tenancy?

Is the tenant entitled to a Monetary Order, and for what amount?

Is the tenant entitled to reduced rent?

Is the landlord obliged to comply with the repairs as claimed by the tenant?

Background and Evidence

The rental unit consists of an apartment in a multi unit complex located in Vancouver. Pursuant to a written agreement, the month to month tenancy started in June 2008. The current monthly rate of \$1015.00 is payable on the first of each month.

As part of her written submissions, the tenant provided a copy of the landlord's 10 Day Notice to End Tenancy for unpaid rent dated December 9th, 2010, and effective December 22nd, 2010. The tenant testified that after receiving legal advice concerning her obligation to pay the rent, on December 6th, 2010 she had written the landlord a cheque for the month of December 2010. The tenant stated that the landlord informed her that the cheque was made out to the wrong business entity. The tenant said that she wrote a new cheque, included another cheque to cover the rent for January 2011, and that the landlord did not pick them up yet. The landlord testified that the rent was still outstanding, but was willing to accept the tenant's new cheques if delivered forthwith.

The tenant also provided written submissions that she communicated with the landlord by email regarding serious gas leaks from the heater in her unit that started mid September 2010. The tenant said that by December, the leaks became a health and safety threat to the point where she had to shut off the heat in December. She stated that on December 27th, Terasen Gas inspected the heater and considered the leaks dangerous and in need of immediate repair. The tenant stated that she also informed the landlord of a carbon monoxide gas leak from her stove. The tenant submitted that these leaks have forced her to move out of the unit in December and to stay at friends' places. She said that she has been constantly sick and attributes her sickness to the poor quality of air she had to breathe.

The tenant provided an updated monetary claim as follows:

- Compensation for half a month's rent for September 2010:	\$ 507.50
- Compensation for half a month's rent for October 2010:	\$ 507.50
- Compensation for half a month's rent for November 2010:	\$ 507.50
- Compensation for a full month's rent for December 2010:	\$1015.00
- Compensation for a full month's rent for January 2011:	\$1015.00
- Compensation for loss of peace and health:	\$1447.50
- Total:	\$5000.00

The tenant claimed compensation for her utilities however did not provide a definite amount.

The landlord testified that she did not become aware of the gas leak issues until December 27th, 2010. She stated that she provided the tenant with a heat lamp, offered an electric heater, and arranged for a gas fitter to inspect and fix the problems. The landlord argued that she had difficulty contacting the tenant to arrange a suitable time for the repairs. The landlord said that as of January 18th, 2011, the leaks were fixed, the heater was serviced, and the stove had been replaced.

Analysis

At the hearing, the parties reached an agreement to resolve the unpaid rent issue. Accordingly, the Notice to End Tenancy is of no effect and the tenant's application to cancel the Notice to End Tenancy is dismissed.

Turning to the remainder of the tenant's application: the landlord bears a number of obligations towards the tenant. Section 28 of the *Residential Tenancy Act* provides in part that a tenant is entitled to quiet enjoyment including, but not limited to: freedom from unreasonable disturbance; and exclusive possession of the rental unit. In this case, after reviewing the tenant's written and oral submissions, I find that the landlord did not react with diligence as soon as the tenant addressed concerns with a gas leak. Section 33 of the *Residential Tenancy Act* identifies major leaks and the primary heating system as emergency repairs. The landlord did not intervene until late December and the problems were fixed on January 18th, 2011, somewhat over four months later. I am satisfied that during that time, the tenant did lose significant quiet enjoyment and that she was forced to temporarily move out of the unit. Accordingly, I find that the tenant is entitled to an abatement of rent and compensation for loss of quiet enjoyment as follows:

- For the months of September to November 2010, I award the tenant a reduced rent of \$125.00 per month for the sum of \$375.00.
- For the month of December 2010, I award the tenant a reduced rent of \$500.00
- For a portion of the month of January 2011, I award the tenant a reduced rent of \$250.00.

The tenant did not provide medical evidence to substantiate her monetary claim concerning her health condition being directly related to the problems in the unit.

Conclusion

The tenant has established a claim for \$1125.00. Since she was partially successful, I award the tenant partial recovery of the filing fee for \$25.00. Pursuant to Section 67 of the Act, I grant the tenant a Monetary Order totalling \$1150.00.

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 20, 2011.

Residential Tenancy Branch