



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNL, MNDC, ERP, RP, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy; a monetary order; and an order to have the landlord make repairs and emergency repairs.

The hearing was conducted via teleconference and was attended by one of the tenants only. The landlord did not attend.

The tenant testified that she served both the landlord and the agent that signed the tenancy agreement with her in 2005 with notice of this hearing, however the package sent to the agent was returned as unknown and the package sent to the landlord has not been returned.

The tenant provided confirmation by way of the provision of tracking numbers that the packages had been sent via registered mail, as is required under the *Residential Tenancy Act (Act)*. Section 90 of the *Act* states a document sent by mail is deemed served on the 5th day after it is mailed.

I find that the landlord has been served with the hearing documents in accordance with the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property; to a monetary order for compensation for damage or loss; to an order to have the landlord complete repairs and emergency repairs and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 33, 49, 67, and 72 of the *Act*.

Background and Evidence

The tenants submitted into evidence a copy of a tenancy agreement signed by the parties on December 3, 2005 for a month to month tenancy for a monthly rent of \$1,200.00 due on the 1st of the month and a security deposit of \$600.00 was paid.

The tenants also submitted a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated January 29, 2011 with an effective vacancy date of April 1, 2011. The landlord has failed to indicate by placing an "x" in any boxes that apply to the reasons for the 2 month notice as per the instructions on the notice.

The tenant testified that she has not had a landlord's contact name or number for emergencies or repairs for several years. She stated that she had attempted to contact the previous agent several years ago; left approximately 20 messages and received no response.

When it was discovered that the oil tank was leaking in December 2010 the tenant found out from their neighbours who to contact, as the neighbours also rent from the same landlord. The tenants contacted the new agent to advise that the furnace was no longer working as the oil tank was leaking and they got no repair response from the landlord.

When the landlord's agent came by on January 2, 2011 to pick up rent the tenant showed the agent again the oil tank hole; the roof leaks and a broken window and again the landlord did not start any repairs. The tenant then wrote a letter to the landlord dated January 3, 2011 outlining the required repairs and providing the landlord with an adequate amount of time to respond.

To date the tenant states that although a new tank was placed into position it has not been connected and the old tank remains in the yard leaking oil and that the landlord has taken no action to repair the roof leaks or broken window.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy for their own use of the property, for a number of reasons, by issuing a notice to end the tenancy that is in accordance with Section 49 and Section 52. Section 52 requires, among other things, that the notice must provide the reason for ending the tenancy and it must be in the approved form.

The approved form, includes that the directions on the approved form must be followed. As the landlord has failed to provide a notice that indicates the reasons to end the tenancy by completing the form as instructed, I find the 2 Month Notice to End Tenancy for Landlord's Use of Property issued on January 31, 2011 to be invalid and therefore ineffective.

Section 32 of the Act requires a landlord to provide and maintain a residential property in state that complies with the health, safety and housing standards required by law and having regard for the age, character and location of the rental unit, make it suitable for occupation by a tenant.

Section 33 requires the landlord to make emergency repairs where they are urgent, necessary for the health or safety of anyone or for the preservation or use of the residential property; and are required for major leaks in the roof and the primary heating system.

In the absence of any evidence or testimony from the landlord I find the tenant has established that they have been without a furnace since December 2010; has a roof that is leaking that requires attention; and has a broken window that requires repair.

As a result and in conjunction with the fact that the landlord had failed to provide the tenants with an emergency contact number, as is required under Section 33(2), I find the tenants are entitled to compensation for the landlord's failure to repair the furnace during the coldest of the winter months in the amount of \$1,500.00.

I order the landlord to immediately provide the tenants with a contact name and number that the tenants can access 24 hours per day for emergency situations.

In addition, I order the landlord to complete the repairs necessary to have the furnace running; the removal of the old oil tank from the residential property; to determine the cause and effect the repairs required to stop all leaking from the roof of the rental unit; and to repair the broken window.

I further order that the rent for the rental unit be reduced to \$1,000.00 per month, in recognition of the additional electrical and wood fuel costs the tenant is required to pay to heat the rental unit, until such time as the landlord completes all the above repairs and receives an order from a Dispute Resolution Officer that the rent can be increased to its original amount.

Conclusion

For the reasons noted above, I grant the tenants' application to cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property and find the tenancy to be in full force and effect.

I find that the tenants are entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,550.00** comprised of \$1,500.00 compensation and the \$50.00 fee paid by the tenants for this application.

I order the tenants may deduct this amount from future rent payments, in accordance with Section 72(2)(a), until the full amount has been accounted for.

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: February 16, 2011.

Residential Tenancy Branch