



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNL, O, FF

Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy and an order that the landlord produce utility bills. Both parties participated in the conference call hearing.

Issue to be Decided

Should the notice to end tenancy be set aside?
Should other orders be made respecting utility bills?

Background and Evidence

The parties agreed that on February 27 the landlord served the tenants with a two month notice to end tenancy (the "Notice"). The Notice alleged that the landlord intended to repair the rental unit in a manner that required the rental unit to be vacant. The tenants seek to have this notice set aside.

The landlord testified that he intends to replace the vanities in both bathrooms and the cabinets in the kitchen, replace the shower controls in one bathroom, repair the deck, repaint the interior of the unit and paint the soffits and fascia. The landlord stated that he expected repairs to take up to two weeks, assuming sub-trades were able to comply with the timeline he had planned. The parties agreed that no permits were required to do the work intended by the landlord. The tenants argued that the landlord should be able to conduct the renovations without ending their tenancy.

The parties agreed that the tenancy agreement provides that the tenants pay half of the utility costs for the rental unit, the other half being borne by occupants of a lower suite or by the landlord if the lower suite is unoccupied. In the "details of dispute" section of their application for dispute resolution, the tenants complained that the landlord had not provided them with utility bills from August 2010. The details do not specifically request an order related to the utilities.

Analysis

First addressing the Notice, the landlord bears the burden of proving that he has grounds to end the tenancy and specifically must satisfy me that the proposed renovations cannot be accomplished without ending the tenancy. I find that the landlord has failed to meet this burden. The renovations will certainly cause some inconvenience to the tenants and perhaps will not be able to be completed within the timeframe desired by the landlord, but I find that the landlord has not proven that the rental unit must be empty or the tenancy ended in order for renovations to take place. Accordingly I order that the Notice be set aside and of no force or effect. As a result, the tenancy will continue.

The rules of natural justice require that the landlord be given notice of the claim made against him. The tenants' claim regarding utilities as written on the application for dispute resolution is indefinite and appears to be limited to a desire to receive copies of the utility bills. Although considerable time was spent at the hearing discussing whether the tenants should be responsible for one half of the utilities and the suggestion was made that a monetary award should be made, the application for dispute resolution does not include a claim for a monetary order and I find that as the landlord had no notice that a monetary claim was being made, I cannot make such an award. I therefore dismiss the claim about utility invoices as the parties were agreed that the tenants have now received those invoices.

I find that the tenants are entitled to recover the \$50.00 filing fee paid to bring their application. The tenants may deduct \$50.00 from future rent owed to the landlord.

Conclusion

The Notice is set aside. The claim for an order that the landlord provide utility invoices is dismissed. The tenants may deduct \$50.00 from one future rental payment.

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: March 24, 2011

Residential Tenancy Branch