



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenants: CNR
For the tenants: OLC, ERP, RP
For the landlord: OPR, MNR, FF

Introduction

This hearing dealt with the cross applications of the parties, although the tenants filed two applications. One of the tenants' applications was in response to the landlord's issuance of a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") and seeks to cancel that Notice.

The tenants' second application dealt with the tenants' requests for orders requiring the landlord to make emergency repairs, complete repairs and to comply with the Residential Tenancy Act (the "Act").

Although the tenants filed two applications, the applications were scheduled to be heard on the same day. As a result, all three applications were dealt with on the scheduled hearing date.

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

Issue(s) to be Decided

Are the tenants entitled to an order cancelling a notice to end tenancy for unpaid rent?

Are the tenants entitled to an order requiring the landlord to make emergency repairs, complete repairs and to comply with the Act?

Have the tenants breached the *Residential Tenancy Act* (the "Act") or tenancy agreement, entitling the landlord to an order for unpaid rent and for an order of possession?

Background and Evidence

I heard testimony that this tenancy started on June 1, 2010, monthly rent is \$750.00, plus utilities, tenant KS, paid a security deposit of \$187.50 and tenants MP and BS paid a security deposit of \$254.00.

I heard testimony and reviewed evidence which indicated tenant KS, was a sub-tenant of the former tenants in the rental unit, and stayed on as a tenant when tenants MP and BS began their tenancy on June 1, 2010.

I heard testimony that the rental unit was formerly a business location, the building was built in 1939, that tenant KS occupies the attic, at his choice, and tenants MP and BS occupy as a bedroom, an add-on, at the back of the building.

Landlord's Application:

Pursuant to the Residential Tenancy Branch Rules of Procedure, the landlord proceeded first in the hearing to explain and support the Notice to End the Tenancy for Unpaid Rent.

The landlord issued the tenants a 10 Day Notice for Unpaid Rent (the "Notice"). The Notice listed the amount of \$1,992.86 in unpaid rent and the amount of \$1,251.93 in unpaid utilities. However the Notice listed neither the effective end of tenancy date nor the date it was signed.

The landlord was informed that the Notice did not conform to Section 52 of the Act, which states that in order to be effective, a notice to end a tenancy must, among other things, be signed and dated by the landlord giving the notice and state the effective date of the notice.

The landlord supplied into evidence a significant amount of evidence, which included a copy of the Notice, a noteworthy amount of emails between the parties throughout the tenancy, photos of the rental unit and utility bills.

Tenants' Application (File No. 777320)

As a result of determining that the Notice was not valid, it was no longer necessary to consider the tenant's application seeking cancellation of the Notice.

Tenant's Application (File No. 777321)

In support of their application for emergency repairs, the tenant testified that the roof over the only bedroom, which is attached to the back of the main building, has been leaking since December 2010, and has not been repaired. The tenant submitted that water is pouring down the wall, birds are now in the roof and mould has started to grow.

The tenant stated that the landlord placed a tarp over the bedroom, but the tarp is ineffective and blocks the only access for a fire escape.

As to the tenants' request for repairs to the rental unit, the tenant stated that the pull down ladder to the attic is missing and that the replacement ladder is not for everyday use, causing someone to fall off the ladder in recent months. The tenant submitted that this is the only access for tenant KS to the attic.

The tenant stated that the ladder does not conform to the city code, although, upon query, the tenant had no evidence of a city code violation.

I note that in the landlord's evidence, the tenant informed the landlord they were withholding \$1,000.00 from a rent payment for purchasing a ladder.

As to another repair request, the tenant submitted that they are entitled to an audit report as their energy bills are too high. Additionally the tenant stated that when they signed the tenancy agreement, the landlord promised to insulate the rental unit, but has failed to do so after receiving an estimate of \$2,000.00.

The tenant submitted they would not have rented the rental unit if the landlord had not promised to insulate the premises, as the building is a 1939 build.

Another repair request concerns exposed wiring, which, according to the tenant is not up to code and is dangerous. Additionally, there are exposed pipes in the rental unit, the oven door falls off when in use, the refrigerator door is falling off, the hot water tank is leaning, the fuse panel is ripped off and there are no external plumbing fixtures.

The tenant also submitted that the tenants need additional electrical outlets for their use and a smoke alarm.

Upon query, the tenant admitted that she has supplied no evidence, such as photos, emails, health and safety code standards or proof of any violations, due to costs. Further the tenant pointed to the fact the landlord submitted emails, but when queried during the hearing, the tenant could not point to specific emails concerning the relevant point.

In response, the landlord stated that she was informed in December, 2010 that the part of the roof, which the tenants are using as a bedroom, started to leak. The landlord stated that she offered to have the roof fixed, but that the tenants declined, stating they would prefer to do the work themselves. The landlord did, however, supply the requested materials.

The landlord stated that she was not informed that the roof was still leaking until July 2011.

The landlord submitted that a brand new roof was put on the main building, but that the portion of the building the tenants are using as a bedroom was an attachment, not a permanent fixture, and scheduled to be removed.

The landlord submitted that she has supplied a ladder to the attic, although it was tenant's choice to move into the attic. The landlord stated that the attic was not actually a bedroom.

Further the landlord stated that the ladder she has supplied worked fine for the workmen who accessed the attic when making electrical repairs and did not understand why the tenant could not use the ladder.

The landlord submitted that she was not informed there were exposed wires and could not understand why there would be exposed wires as she hired a certified electrician to do the wiring.

The landlord stated that there are some pipes where the cabinets are to be replaced.

The landlord submitted that she was not aware of the issues with the oven door and refrigerator as those appliances were working when she was in the rental unit.

The landlord stated that she knew that the hot water tank was leaning, but not denied that it needed repairing.

Analysis

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

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

Landlord's Application:

Based on the aforementioned lack of signature and date, I find the 10 Day Notice to End Tenancy issued by the landlord does not meet the form and content of section 52 of the Act. Therefore, the 10 Day Notice to End Tenancy is invalid and of no force or effect and I hereby **dismiss** the landlord's application, with the effect that this tenancy continue until it otherwise ends under the Act.

The landlord is at liberty to issue another 10 Day Notice seeking an end to the tenancy for unpaid rent and utilities.

Tenants' Applications:

File No. 777320; Cancellation of the Notice to End Tenancy

As I have dismissed the landlord's application, I find the tenants no longer required consideration of their application seeking a cancellation of the Notice. I therefore dismiss their application.

File No. 777321; Orders to the landlord to make emergency repairs, to make repairs and to comply with the Act

Section 32 of the Act requires a landlord to provide and maintain a residential property in a 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.

I find the tenants themselves submitted insufficient evidence under Sec. 33 of the Act that any alleged repairs were necessary for the health and safety reasons or that there were any emergency repairs which were urgent, and that they have not met this criteria.

The evidence I reviewed, the landlord's evidence, suggests that the tenants reported the leaking roof in January, not December, and insisted on performing the repair themselves. The testimony suggests that the landlord was not informed that the roof was still leaking until July 2011, after the landlord brought up the subject of unpaid rent. I find this creates doubt on the tenant's credibility.

I find the tenants did not sufficiently meet the burden of proof that the issue was of an urgent nature, and I therefore **dismiss** their request for emergency repairs.

As to the issue of repairs, I find that the tenants have failed to prove, on the balance of probabilities, that the landlord has not maintained the rental unit in a state required by the Act. The tenant did not supply any meaningful evidence themselves, only a written summary. Instead the tenants relied on the landlord's evidence, but could not point to any specific evidence when queried, stating that it was "in the landlord's evidence."

Although the tenants argue that they are entitled to have the landlord insulate the rental unit, the tenants accepted a home built in 1939 and was a converted business. Therefore, on a balance of probabilities and considering the age, character and location of the rental unit, I find the landlord has provided a residential property suitable for occupation by the tenants.

Therefore, based upon the above and the tenants' insufficient evidence, the tenants' request that the landlord be ordered to make emergency repairs, repair the rental unit and to comply with the Act is **dismissed**.

Conclusion

The landlord's application is dismissed.

The landlord is at liberty to issue another 10 Day Notice to End Tenancy.

The tenants' applications are dismissed, without leave to reapply.

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: August 18, 2011.

Residential Tenancy Branch