



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, RR, FF

Introduction

This hearing dealt with the Tenants' application to cancel a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice); for a reduction in rent for repairs, services or facilities agreed upon by not provided; and for recovery of the filing fee.

Both parties gave affirmed testimony at the Hearing.

It was established that the Landlord received the Notice of Hearing documents and copies of the Tenants' documentary evidence on September 9, 2011.

The Landlord testified that he did not serve the Tenants with copies of his documentary evidence and therefore, they were given no weight in this Decision.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, **only the evidence relevant to the issues and findings in this matter** are described in this Decision.

Issue to be Decided

- Should the Notice issued September 2, 2011, be cancelled?
- Are the Tenants entitled to a reduction in rent pursuant to the provisions of Section 65(1) of the *Residential Tenancy Act* (the "Act")?

Background and Evidence

The parties agreed that the Tenants paid the September rent in the amount of \$600.00 on September 2, 2011.

The female Tenant testified that the Tenants have verbally advised the Landlord about required repairs to the chimney and to a window in the rental unit, but he has not made the repairs. The Tenants seek a reduction in rent for the repairs that are required, but

have not been done. The Tenants provided photographs of the rental unit in support of their application.

The Landlord testified that the roof and chimney have been repaired, but the stains caused by the leak have not been removed. The Landlord agreed that they were unsightly.

The Landlord testified that the crack in the window was a small crack and that the Tenants had agreed to pay less rent at the beginning of the tenancy because of some deficiencies in the rental unit.

Analysis

The Tenants paid September's rent on September 2, 2011, and therefore I find that the Notice is of no force or effect, pursuant to the provisions of Section 46(4)(a) of the Act.

The Landlord stated that the Tenants were paying a low rent because the rental unit had some deficiencies, however Section 32 of the Act requires a landlord to provide and maintain a rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. Parties cannot avoid or contract out of the Act. Any attempt to do so is of no effect.

I order the Landlord to comply with Section 32 of the Act and repair and paint the interior walls surrounding the chimney and replace the cracked window in the rental unit within 30 days. The Landlord was given this order during the Hearing and therefore the order is effective October 5, 2011. For the sake of clarity, the Landlord must make these repairs by November 4, 2011.

If the Landlord fails to make these repairs, the Tenants are at liberty to make application for a reduction in rent.

It is important to note that the male Tenant was rude and antagonistic at the beginning of the Hearing. While I was asking preliminary questions, he would interrupt the Landlord and make derogatory remarks. The male Tenant was assured that he would have an opportunity to present his evidence and was warned three times to cease interrupting. The male Tenant continued to be disruptive and was excluded from the Hearing. The Hearing continued with the female Tenant providing testimony for the Tenants.

The Tenants are hereby advised, should they decide to file another Application for Dispute Resolution, of the provisions of Rule 8.7 of the *Dispute Resolution Rules of Procedure*, which provides:

8.7 Interruptions and inappropriate behaviour at the dispute resolution proceeding

Disrupting the other party's presentation with questions or comments will not be permitted. The Dispute Resolution Officer may give directions to a party, to a party's agent or representative, a witness, or any other person in attendance at a dispute resolution proceeding who presents rude, antagonistic or inappropriate behaviour. A person who does not comply with the Dispute Resolution Officer's direction may be excluded from the dispute resolution proceeding and the Dispute Resolution Officer may proceed with the dispute resolution proceeding in the absence of the excluded party.

The Tenants have been successful in their application and are entitled to recover the cost of the filing fee from the Landlord. Pursuant to the provisions of Section 72 of the Act, the Tenants may deduct the amount of \$50.00 from future rent due to the Landlord.

Conclusion

The Notice to End Tenancy issued September 2, 2011, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Landlord is hereby ordered to comply with the provisions of Section 32 of the Act and make repairs to, and repaint the walls surrounding, the interior chimney at the rental unit and to replace the cracked window in the rental unit, by November 4, 2011. If the Landlord does not comply with this order, the Tenants are at liberty to make application for a reduction in rent.

The Tenants may deduct \$50.00 from future rent due to the Landlord.

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: October 06, 2011.

Residential Tenancy Branch