



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP. RR

Introduction

This hearing was convened by way of conference call in repose to the tenants' application to cancel the 10 Day Notice to End Tenancy for unpaid rent; for an Order for the landlord to make repairs to the unit, site or property and an Order to reduce rent for repairs, services or facilities agreed upon but not provided.

One tenant, the landlords and the landlords agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The tenants provided a copy of the 10 Day Notice in evidence to the Residential Tenancy Branch in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find the tenants have applied for an Order for the landlord to make repairs to the unit, site or property and an Order to reduce their rent for repairs, services or facilities agreed upon but not provided. As nether of these sections are connected to the main section which is to cancel the Notice for unpaid rent it is my decision that these sections will not be heard at the hearing today.

Issue(s) to be Decided

- Are the tenants entitled to cancel the Notice to End Tenancy for unpaid rent?

Background and Evidence

Both parties agree that the tenants moved into this unit on October 25, 2011, Rent for this unit was agreed at \$1,000.00 per month and is due on the first day of each month in advance.

The landlords testify that the tenants used to live in another unit and this tenant asked to be moved to this unit as it is a better place. The landlords' testify that the tenants' belongings had to be removed from the previous unit. The landlords' testify that this tenant informed the landlords that he would get the rent money from Social Services however no rent has yet been paid for November or December, 2011.

The landlords testify that there was a fire in an adjoining unit to the tenants' previous unit but the tenants unit was not affected by this fire. The landlord states the tenant appears to be under the impression that the landlords will compensate him for the fire that was in another unit however the landlords testify that as the tenants unit was unaffected by this fire, as there is a fire wall in place between the two units, they have no obligation to compensate the tenants because a fire took place in an adjoining unit. The landlords testify this tenant was served with a 10 Day Notice to End Tenancy in person on November 20, 2011. This Notice states the tenant owes rent of \$1,000.00 for November, 2011 and the tenant has five days to pay the rent, dispute the notice or move from the rental unit on November 21, 2011.

The tenant attending testifies that the fire in the adjoining unit did affect his unit. The windows in the adjoining unit exploded and the firemen had to come through his unit to

gain access to the unit on fire. The tenant states smoke and soot entered his previous unit and ruined all his belongings. The tenant testifies that is why he moved to this unit.

The tenant testifies the fire happened on September 30, 2011 and the tenant could not live in his previous unit throughout October, 2011 despite having already paid rent for that unit.

The tenant testifies the landlord offered to move him to his present unit and gave him the keys on October 25, 2011. The tenant testifies he had a verbal agreement with the landlord that they would not have to pay rent on this new unit for November, 2011 in compensation as they had already paid rent in the previous unit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. By their nature, disputed verbal terms are not clear and are often impossible for a third party to interpret. I am not prepared to find in this matter that there was a verbal arrangement in place for the tenant to be compensated with one month free rent on this unit for alleged fire damage in his old unit. The tenant has not met the burden of proof that there was fire damage to his old unit which resulted in the tenant having to leave that unit for most of October, 2011. The tenant has provided no evidence to support his claim that he lost all his belongings due to fire damage and the tenant has provided no evidence to show an agreement was in place between the tenants and landlords concerning free rent period for November, 2011. Consequently, I refer the tenants to s. 26 of the Act which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

It is my decision that the tenants have failed to pay rent for November and December, 2011 to the sum of \$2,000.00. Consequently, as the tenants did not respond to the 10 day Notice to End Tenancy by paying the rent as directed on that Notice the tenants' application to cancel the Notice is dismissed.

The landlord has only requested at the hearing that the tenant pays the outstanding rent and did not request any Orders to be issued at this hearing.

Conclusion

The tenant's application is dismissed without leave to reapply. The 10 Day Notice to End Tenancy for unpaid rent will remain in force and effect.

As the Notice has been upheld and the tenancy will end the reminder of the tenants' application is also 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: December 13, 2011.

Residential Tenancy Branch