Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, ERP, RP, PSF, LRE, FF

Introduction

This matter dealt with an application by the Tenants for an Order that the Landlord make emergency repairs and general repairs, for an Order that the Landlord provide services and facilities agreed to or required by law, for an Order restricting the Landlord from entering the rental unit and to recover the filing fee for this proceeding.

On the first day of the hearing, the Tenants said they served the owner of the corporate Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail to his residence (as advised by an employee of the Residential Tenancy Branch) however he did not attend the hearing. Consequently, the Tenants were instructed by the Dispute Resolution Officer to re-serve the corporate Landlord at its address for service indicated on a 10 Day Notice to End Tenancy. On the second day of the hearing, the Tenants provided documentary evidence that they had served the Landlord as instructed and accordingly, I find that the Landlord was served with the Tenants' hearing package as required by s. 89 of the Act.

Issue(s) to be Decided

1. Are repairs required?
2. Are the Tenants being denied services or facilities?
3. Is an Order required to restrict the Landlord's access to the rental unit?

Background and Evidence

This tenancy started on May 9, 2010. Rent is $1,800.00 per month. There is no written tenancy agreement. The Tenants claim that heat and electricity has been included in their rent since the beginning of the tenancy.

The Tenants said that on in late-September or early-October 2011, the owner of the corporate Landlord advised them that the furnace was going through an excessive amount of oil and that he would no longer pay for heating oil. As a result, the Tenants said they had to pay $999.95 for oil and they deducted that amount from their rent for October 2011. The Tenants said they were then served by the Landlord with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Consequently, the Tenants said they paid the Landlord $1,000.00 within the 5 days granted under s. 46(4) of the Act and

thereby cancelled the 10 Day Notice. The Tenants said the Landlord then agreed that they could deduct $1,000.00 from their rent for November 2011 to compensate them for the heating oil.

The Tenants said the rental unit is located on a 5 acre parcel of land. The Tenants said that shortly after they moved in they were disturbed by machinery installing irrigation. The Tenants said that when they complained to the owner about it, he told them that they only rented the house. The Tenants claim that the owner of the corporate Landlord attends the property on a daily basis and this disturbs their privacy as well as their use and enjoyment of the rental unit.

The Tenants further claim that the rental property is in need of the following repairs:

- Cooking stove thermostat is broken and the stove is very old and in need of replacement;
- All exterior doors need to be levelled and door sweeps installed;
- A hole in the exterior wall behind a power box needs to be repaired;
- The electrical box needs to be anchored;
- Breakers in the power box need to be inspected for safety because the amperage is too high;
- The bathroom exhaust fan is broken;
- The furnace is old and consumes excessive oil.

On the second day of the hearing, the Agent for the Landlord claimed that a contractor would be attending the rental property and assessing these items and if necessary, repairing them. On the third day of the hearing, the Parties advised me that a new cooking stove had been installed in the rental unit and that many of the required repairs had been completed. The Tenants said the bathroom exhaust fan had not been replaced although it was scheduled to be installed soon. The Agent for the Landlord also claimed that the power box had not been inspected but that she was arranging to have an electrician do so shortly. In summary, the Tenants said they were satisfied that there were no outstanding repairs.

The Tenants sought confirmation however, that they would not be responsible for the payment of heating oil and electricity in the future. The Agent for the Landlord claimed that heat and electricity were not supposed to have been included in the Tenants' rent but due to an oversight by the previous property manager, these utilities were paid on behalf of the Tenants without the Landlord being aware of it.

Analysis

Given that the repairs to the rental unit have been completed or that steps are being taken to complete them, I make no repair Orders at this time.

With respect to the Tenants' application for the Landlord to provide services and facilities, I note that there is no written tenancy agreement to address who is responsible for the payment of utilities. Section 13 of the Act places the onus on a Landlord to prepare a written tenancy agreement which must set out what services or facilities are included in the rent. In the absence of a written tenancy agreement, the terms of the tenancy agreement may be determined by the practice of the Parties. In this case, I find that it has been the Parties' practice for the Landlord to pay for heating oil and therefore I conclude that it is a term of the Parties' tenancy agreement that heating oil is included in the rent.

The Tenants also sought clarification as to whether electricity was included in the rent however I decline to address this issue. The Tenants' application for the Landlord to provide services and facilities was based solely on the Landlord's refusal to continue to pay for heating oil. There is no evidence that the Landlord has refused to pay for the electricity and therefore I find that this is not a matter that is currently in dispute. If this becomes a matter in dispute, the Tenants can apply for the same relief they sought in this proceeding with respect to the heating oil.

The Tenants further sought an Order restricting the Landlord from entering onto the rental property. However, s. 70(2) of the Act says "if satisfied that a landlord is likely to ***enter a rental unit*** other than as authorized by s. 29 of the Act, the director, by order, may authorize the tenant to change the locks and prohibit the landlord from replacing the locks or obtaining the new keys." In other words, the relief sought by the Tenants does not exist under the Act. The Act only refers to restrictions placed on a Landlord's right to enter a rental unit and not the rental property. If the Landlord's presence on the rental property is unreasonable and is disturbing the Tenants, then their remedy is to apply for compensation for a loss of quiet enjoyment. Consequently, this part of the Tenants' application is dismissed without leave to reapply.

I find that the Tenants are entitled pursuant to s. 72(1) of the Act to recover the $50.00 filing fee they paid for this proceeding from the Landlord and I Order pursuant to s. 72(2) of the Act that they may deduct this amount from their next rent payment when it is due and payable.

Conclusion

The Tenants' application is granted in part on the above-noted terms. 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 21, 2011.

Residential Tenancy Branch