



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP, RR, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for an order cancelling a notice to end tenancy for unpaid rent or utilities; for an order that the landlords make repairs to the unit, site or property; for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, and to recover the filing fee from the landlords for the cost of this application.

One of the landlords and the tenant attended the conference call hearing, provided affirmed testimony and were given the opportunity to cross examine each other on the evidence. All evidence and testimony provided have been reviewed and are considered in this Decision.

During the course of the hearing, the landlord advised that the notice to end the tenancy has been cancelled because the tenant paid the outstanding rent within 5 days of receiving the notice.

Issue(s) to be Decided

- Is the tenant entitled to an order that the landlords make repairs to the unit, site or property?
- Is the tenant entitled to an order allowing the tenant to reduce rent for repairs, services, or facilities agreed upon but not provided?

Background and Evidence

The parties agree that this month-to-month tenancy began on November 1, 2010, however the landlord allowed the tenant to move in some articles prior to that date, and the tenant still resides in the rental unit. Rent in the amount of \$1,300.00 per month is payable in advance on the 1st day of each month. On October 29, 2010 the landlord collected a security deposit from the tenant in the amount of \$650.00.

The tenant testified that the house was clean when the tenant moved into the rental unit, and the tenant had no complaints for the first year. On October 27, 2011 the landlord told the tenant to remove belongings from the storage room or the tenant would have to move out. The tenant told the landlord that if rent was reduced by \$100.00 the tenant would remove all the stuff from the storage, and the landlord got mad and gave the tenant a notice to end the tenancy.

On November 2, 2011 the tenant called the landlord asking the landlord to pick up post-dated cheques for rent, but the landlords didn't arrive until November 7, 2011 and gave the tenant a gas bill to pay. The tenant stated that the tenant paid full hydro and the parties had no agreement about gas bills.

The tenant further testified that the fan shuts off because the breaker shuts off all the time, and has for over a year now.

The landlord testified that the landlord and the landlord's spouse went to the rental unit to deliver a gas bill to the tenant on November 7, 2011. The gas is in the landlord's name and the electric bill is in the tenant's name and 50 % of each is payable by the tenant. The tenant owes \$288.70 for the gas bill from November 1, 2010 to October 18, 2011. There is no written tenancy agreement, however the tenant told the landlord that the tenant will not pay rent or utilities until the landlord signs a tenancy agreement prepared by the tenant. A copy of that unsigned agreement was provided in advance of the hearing. The landlord was concerned about the form because it states that if either party fails to honour a lease, they pay \$2,500.00 to the other party. The form also states that the landlord would agree to pay the gas bill and the tenant agrees to pay the hydro bills, and at the end of the lease, the person who paid the lesser amount would pay the difference.

The landlord further testified that the tenant has control of the heat, and shares laundry facilities with another tenant. The other tenant only does laundry once per week and the tenant complains even though the tenant does laundry 6 days per week.

The tenant started to use a storage space that belongs to the other unit after the tenant in that unit moved out at the end of August, 2011. The tenant stores chemicals, gas cans and commercial cleaning supplies for the tenant's maintenance business. The landlord has asked the tenant to remove the articles, and gave the tenant a written demand but has still not removed the items.

The landlord also testified that the video provided as evidence by the tenant has been staged; the video shows a dirty washroom which is the tenant's responsibility; the carpet shows a stain that was not present when the landlords inspected the rental unit days

before this hearing; the tenant shows that the fan is noisy but the landlord replaced it on April 1, 2011; the sensor light and inside lights have been replaced; and the laundry room contains the tenant's belongings. The landlord provided copies of receipts to substantiate the testimony.

The landlord further testified that the tenant became aggressive and threatened to not pay rent. The tenant would not do yard work, so the landlord hired someone to do so and the tenant would not allow the worker on the property and nothing was done. The landlord had to pay \$65.00 for the call-out. During the course of the hearing the parties agreed that after 10:00 a.m. on weekends the landlord can do yard work, and after 2:00 p.m. on week days.

Analysis

In the circumstances, I find that the tenant has failed to establish that the landlord has not complied with the *Act*, or that the tenant is entitled to an order that the landlord make repairs to the unit, site or property. The only repairs mentioned by the tenant are with respect to a fan that the tenant says shuts off due to a breaker shutting off. The landlord testified that a new fan was installed in April, 2011 and provided evidence to support that testimony.

With respect to the tenant's application to reduce rent for repairs, services or facilities agreed upon but not provided, I find that the tenant has failed to establish that the storage room was ever promised to the tenant or that the landlord has or had an obligation to provide the storage room. No written tenancy agreement exists between the parties, and the tenant provided a form for the landlord to sign, but nowhere in that agreement did the tenant mention the storage room. Even though the parties did not sign the agreement, I find that if the tenant felt the storage room was an entitlement to the tenancy, the tenant ought to have included it in the agreement.

With respect to the landlord's testimony that the tenant stated that rent or utilities will not be paid by the tenant, I refer the tenant to the *Residential Tenancy Act* which states as follows:

26 (1) 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.

The tenant has not provided any evidence or testimony that satisfies me that the tenant has a right under the *Act* to deduct all or a portion of the rent.

With respect to the parties' disagreement for utilities, neither the tenant nor the landlords have made an application to deal with the payment of gas and hydro, however, I find it prudent to mention utilities in this Decision. The tenant stated that the landlord gave the tenant a gas bill on November 7, 2011, but the tenant had no agreement about gas bills and was paying the full hydro bill. The tenancy agreement prepared by the tenant states that the landlord will pay the gas bill and the tenant will pay the hydro bill and at the end of the tenancy, the person who paid the lesser amount would pay the difference. I question why the tenant would include that provision in a tenancy agreement and ask the landlords to sign it if it had not been agreed to at the outset of the tenancy. Further, I heard no testimony by either party of whether or not the tenant has provided hydro bills to the landlord for reimbursement. I suggest the parties meet to find a mutual understanding.

Further, the clause regarding a \$2,500.00 penalty is not enforceable, and the landlord ought not to sign a lease with such provisions.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

Since the parties have agreed, I order that the tenant allow the landlord or the landlord's employees or contractors to do yard work on the rental property after 10:00 a.m. on weekends and after 2:00 p.m. on week days.

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 6, 2011.

Residential Tenancy Branch