



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, FF

Introduction

This hearing was convened by way of conference call in response to the tenants application to cancel a 10 Day Notice to End Tenancy for unpaid rent; an Order for the landlord to comply with the *Residential Tenancy Act, (Act)* Regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the tenants entitled to have the Notice to End Tenancy cancelled?
- Are the tenants entitled to an Order for the landlord to comply with the *Act*, Regulations or tenancy agreement?

Background and Evidence

Both parties agree that this tenancy started on May 23, 2002. Rent was agreed at \$850.00 per month and the rent was reduced to \$650.00 at a hearing held on February 02, 2012 until such a time as the landlord completes repairs to the rental unit. Another

hearing was held for the tenants' application on May 10, 2012. At that hearing the tenants were successful in setting aside a Two Month Notice to End Tenancy and were awarded the \$50.00 filing fee for that proceeding. The tenants were ordered to deduct the \$50.00 from their next rent when it was due and payable. This meant that the tenants rent for June was \$600.00.

The landlord served the tenants with a 10 Day Notice for unpaid rent on June 07, 2012 by posting the Notice to the tenants' door. This Notice is unsigned and undated and the landlord agrees this was an error on his part. The Notice states that the tenants owe \$850.00 which was due on June 01, 2012 and has an effective date of June 18, 2012.

The landlord testifies that as he has made some repairs to the rental unit the tenants should have started to pay their rent of \$850.00 from June 01, 2012. The landlord testifies that he was not aware the tenants had paid \$600.00 into his account as the account does not specify who the payment is from and the landlord has other tenants. The landlord testifies that he was unaware the tenants had paid \$600.00 until he received the tenants evidence showing this payment.

The landlord testifies that his electrician replaced the damaged baseboard heater on June 27, 2012; the landlord testifies that he is waiting for a quote to come in for the replacement of the lawn and the deck and the landlord testifies that he had his contractors look at the roof on June 18, 2012. The landlord states he does not know if the door has been replaced at this time. The landlord testifies that because he has done his due diligence the tenants should now have to start paying the full rent again. The landlord states that he did not do all the repairs within the time frame given from the February, 2012 hearing as the landlord expected a favourable decision from the hearing held in May to deal with the Two Month Notice to End Tenancy.

The tenants' testify that the landlord has not done all the required repairs as specified at the hearing held in February, 2012. The tenants agree that the landlord has replaced the damaged baseboard heater on June 27, 2012 and towards the end of June the

landlord sent contractors in to look at the damaged deck. The landlord's contractors working on the basement also came and looked at the problem with the door and went onto the roof to look at that area. The tenants' testify that the contractors informed them that the roof would need to be replaced and that they would let the landlord know. A few days later these contractors informed the tenants that they had spoken with the landlord and he told them these things would be fixed. The tenants' state that to date the deck, the door and the roof have still not been repaired and the windows have not been looked at.

Due to these outstanding repairs the tenants testify that they paid \$600.00 as ordered in rent for June, 2012 and \$650.00 as ordered in rent for July, 2012. The tenants therefore seek to have the 10 Day Notice cancelled.

The tenants request another Order for the landlord to comply with the *Act* regarding the previous decision concerning the repairs to the deck, the roof the door and the windows.

The parties declined to cross examine the other party on their evidence.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants application to cancel the 10 Day Notice to End Tenancy; I find the tenants are entitled to pay the reduced rent of \$600.00 for June, 2012 as ordered at the hearing held in May, 2012. The tenants are also entitled to continue to pay the reduced rent of \$650.00 as ordered at the hearing held in February, 2012 until the landlord has complied with s. 32 of the *Act* and made repairs to the deck, the roof, the door and investigated the problems with the windows.

Consequently the tenants' application to cancel the 10 day Notice is upheld.

With regard to the tenants application for an order for the landlord to comply with the *Act*, regulations or tenancy agreement; the landlord was provided with one month on February 02, 2012 to investigate and make any repairs to the rental unit. The landlord has failed to abide by the Order and has only recently, in June, 2012, started to investigate and make some of the repairs. As the landlord has now started this process I am not prepared to make any further orders concerning the repairs. However the tenants are at liberty to file an application for monetary compensation if the landlord does not comply with the previous decision in a timely manner and within one month of this hearing date.

Conclusion

The tenant's application is allowed. The 10 Day Notice to End Tenancy for unpaid rent is cancelled and the tenancy will continue. As the tenants have been successful in setting aside the Notice, the tenants are entitled to recover the **\$50.00** filing fee for this proceeding and may deduct that amount from their next rent payment when it is due and payable 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: July 05, 2012.

Residential Tenancy Branch