



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for an order to cancel a ten day notice to end tenancy for unpaid rent, and to recover the cost of filing their application.

Although served with the Application for Dispute Resolution and Notice of Hearing on August 21, 2012, by registered mail the landlords did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlords have been duly served in accordance with the Act.

Issue(s) to be Decided

Should the ten day notice to end tenancy for unpaid rent issued on August 12, 2012, be cancelled?

Should an order be made to the landlord to comply with the Act, regulation or tenancy agreement?

Should the landlord be ordered to make repairs to the unit?

Should the landlord be ordered to provide services or facility required by law?

Background and Evidence

The tenant acknowledged they received a notice to end tenancy on August 12, 2012. The effective date on the Notice stated July 22, 2012, however, this date corrects automatically under the Act to August 22, 2012.

The tenant testified rent has not been paid for August 2012, and have withheld rent as the landlord has not made any repairs to the rental unit as requested.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find 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 acknowledged rent has not been paid, and that they have withheld rent due to the landlord not making repairs to the rental unit.

Under the Act, the tenant can only withhold rent if they have an order from a dispute resolution officer giving them permission or they held part or all of the rent with prior notice to the landlord for emergency repairs. In this case, the tenants did not have permission to withhold any portion of rent and there was no evidence to support the tenants completed emergency repairs. Therefore, I find the tenants have violated section 26 of the Act.

Although the tenant applied to cancel the ten day notice to end tenancy issued on August 12, 2012, within the five days granted, I find that there is no merit to the tenants' application. In particular, the tenant admitted that rent was owed when she received the notice and that amount was not paid within the five days as required by the Act and rent is still outstanding. Therefore, I dismiss the tenants' application to cancel the notice to end tenancy issued on August 12, 2012, as tenancy has legally ended in accordance with the Act.

As the tenancy has legally ended in accordance with the Act, I find it is no longer necessary to consider the balance of the tenants' application. Therefore, I dismiss the balance of the tenants' application with leave to reapply.

The tenants are not entitled to recover the cost of filing the application from the landlord.

Conclusion

The tenants' application is dismissed.

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: September 19, 2012.

Residential Tenancy Branch