



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, RP, PSF, LRE, RR, O

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Landlord by mailing, by registered mail to where the landlord resides. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order requiring the Landlord to make emergency repairs?
- b. Whether the tenant is entitled to an order for repairs?
- c. Whether the tenant is entitled to an order that the landlord provide services or facilities required by law?
- d. Whether the tenant is entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit?

- e. Whether the tenant is entitled to an order for the abatement of past or future rent and if so how much?

Background and Evidence

The tenancy began on August 1, 2012. The tenancy agreement provided that the tenant(s) would pay rent of \$600 per month payable on the first day of each month. The rent was paid directly by the Ministry.

The tenant testified that the rental unit contains toxins that have caused him to be seriously ill. As a result he vacated the rental unit and is living in a tent on the property. He contacted the Building Inspector for the District who completed an inspection. The landlord testified that the Building Inspector told him that the house including the rental unit is safe. However, the rental unit is an illegal suite and the landlord was told by the District to end the tenancy. The landlord served a one month Notice to End Tenancy. The rent for August has not been paid. The landlord has served a 10 day Notice to End Tenancy and has applied for an Order for Possession and a monetary order. That hearing is set for September 19, 2013.

Both parties agree that it is not possible for the tenant to return to the rental unit.

Analysis

As it is not possible for the tenant to return to the rental unit I ordered that the tenant's application for emergency repairs, a repair order, an order that the landlord provide services or facilities required by law and for an order suspending or setting conditions on the landlord's right to enter the rental unit be dismissed as those issues are moot.

The Application for Dispute Resolution filed by the tenant does not make a monetary claim. The tenant testified he is entitled to compensation as the toxic condition of the rental unit has caused him to be seriously ill. The tenant must file an Application for

Dispute Resolution that seeks a monetary order before that issue can be determined. The tenant stated he intends to do that and I suggested that he should request that the Registry set it down for the same time as the landlord's application. I determined that it was appropriate for all of the issues relating to compensation be dealt with at the same time. **As a result I dismissed the tenant's application for an abatement of past or future rent with liberty to re-apply.** The parties were encouraged to obtain evidence from the Building Inspector and other knowledgeable people before the next hearing.

The landlord submitted the tenant is putting himself and others in a dangerous situation. I advised the landlord that in the absence of agreement between the parties I can only make an order based on the claims that are set out in the Application for Dispute Resolution. The landlord is only entitled to regain possession of the property after he has served a Notice to End Tenancy, obtained an Order for Possession and a Writ of Possession or if he has successfully obtained an order from an arbitrator after applying for an early end to the tenancy. The landlord was encouraged to talk to an information officer or his lawyer about the options that are available to him..

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: August 21, 2013

Residential Tenancy Branch

