



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Teja Vista Development
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, RP, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and an order compelling the landlord to perform repairs. The landlord did not participate in the conference call hearing. The tenant gave evidence that on March 12 he served the landlord with his application for dispute resolution and the notice of hearing via registered mail sent to the address for service listed on the tenancy agreement. I found that the landlord was deemed served on March 17 and the hearing proceeded in the landlord's absence.

Issues to be Decided

Should the notice to end tenancy be set aside?
Should the landlord be compelled to perform repairs?

Background and Evidence

The undisputed evidence of the tenant is as follows. The tenancy began on February 1, 2014 and rent was set at \$1,100.00 per month.

At the outset of the tenancy, the tenant noted that there were a number of repair issues in the rental unit and on 4 occasions, February 3, 5, 26 and March 7, requested that the landlord perform repairs. The landlord did not comply with the request.

The tenant supplied photographs showing that there is an uncovered, unsightly air duct in the second bedroom, the bathroom cabinet is missing a drawer and cabinet door and the kitchen cupboard is missing a panel at the top which would prevent the tenant from viewing a duct which runs across the inside top of the cupboard.

The tenant also complained that the thermostat in the master bedroom clicked and created a disturbance and that one of the two fobs he had been issued to access the building was not functioning.

The tenant testified that he did not pay rent on March 1 and on March 6 was served with a 10 day notice to end tenancy for unpaid rent (the "Notice"). The tenant mailed his rent to the landlord on March 7.

The tenant requests that I order that the Notice be set aside and order the landlord to perform the aforementioned repairs. The tenant also seeks to recover the \$50.00 filing fee paid to bring his application.

Analysis

I accept the undisputed testimony of the tenant. The landlord bears the burden of proving that they have grounds to end the tenancy and as the landlord did not appear at the hearing to provide any evidence, I find that the landlord has failed to meet this burden. I therefore order that the Notice is set aside and of no force or effect. As a result, the tenancy will continue.

I find that the tenant had a reasonable expectation at the outset of the tenancy that the cabinets would be finished and ducting hidden. I order the landlord to cut the excess ducting protruding into the second bedroom and install a vent cover. I order the landlord to complete the bathroom cabinets by installing a drawer and door. I order the landlord to complete the kitchen cabinetry by installing a panel inside the cabinet to conceal the ducting that runs through the top of the cabinetry.

I find that the tenant is disturbed by the clicking of the thermostat in the master bedroom. I order the landlord to inspect the thermostat to determine whether measures may be taken to reduce or eliminate that noise.

I order that the above repairs and inspection take place no later than May 31, 2014. If the landlord fails to complete the repairs and inspection by that date, the tenant may file a claim for compensation.

As the tenant did not include a request for the fob repair in his application for dispute resolution and as the landlord had no notice of that claim, I decline to order the landlord to repair or replace the fob. However, the landlord is put on notice that should they not repair or replace the fob now that they are aware it is malfunctioning, the tenant may make a claim for an order that the fob be repaired or replaced and may claim recovery of the filing fee for that claim.

As the tenant has been successful in his claim, I find that he is entitled to recover the \$50.00 filing fee. The tenant may reduce a future rental payment by \$50.00.

I note that at the hearing, I directed the tenant to pay the full rent due in the month of May and told him that he could deduct the filing fee from his June rental payment.

Conclusion

The Notice is set aside and the landlord is ordered to perform repairs as directed above. The tenant may reduce a future rental payment by \$50.00.

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: May 1, 2014

Residential Tenancy Branch

