



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sidhu Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDC, RR

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for an order cancelling a notice to end tenancy for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and for an order reducing rent for repairs, services or facilities agreed upon but not provided.

Both tenants attended the hearing and one of the tenants provided affirmed testimony. Despite being served with the Tenant's Application for Dispute Resolution and notice of hearing documents on November 10, 2014, no one for the landlords attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participants who joined the call were the tenants. The tenant testified that the documents were served by placing them in the mailbox at the business of the landlord which is the same business address where the tenants paid rent. He further testified that the landlord has been in contact with the tenants and has confirmed that the documents were received.

The *Residential Tenancy Act* states that an Application for dispute resolution must be served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1)

The *Act* also states:

- 71** (1) The director may order that a notice, order, process or other document may be served by substituted service in accordance with the order.
- (2) In addition to the authority under subsection (1), the director may make any of the following orders:
- (a) that a document must be served in a manner the director considers necessary, despite sections 88 [*how to give or serve documents generally*] and 89 [*special rules for certain documents*];
 - (b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;
 - (c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

I accept the testimony of the tenant that the landlord has confirmed receipt of the documentation, and I hereby order that the landlords have been sufficiently given or served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

During the course of the hearing, the tenant advised that the tenants have moved out of the rental unit, and the application for an order cancelling the notice to end the tenancy given by the landlord is withdrawn.

Issue(s) to be Decided

The issues remaining to be decided are:

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?
- Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The tenant testified that this month-to-month tenancy began on October 1, 2011. Rent in the amount of \$750.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$375.00 which is still held in trust by the landlords.

The tenant further testified that when the rent was paid for October, 2014 the tenant had asked the landlord to repair the baseboard heaters, and the landlord told the tenant to do it himself. When November's rent was paid, the tenant gave the landlord \$40.00 and the receipt in the amount of \$709.54 for purchase of the baseboard heaters, and combined, the rent for the month of November was covered. The landlord returned, threw the receipt at the tenant, and yelled at the tenant. The landlord was very threatening and said that the tenants would be receiving an eviction notice and would have to move out in 5 days or the landlord would get a bailiff to move them out. The tenant testified that as a result of the landlord's behaviour, the tenant's spouse is terrified of him. A copy of the receipt showing the amount of \$709.54 has also been provided.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy of the notice has been provided and it is dated November 1, 2014 and contains an expected date of vacancy of November 11, 2014 for unpaid rent in the amount of \$710.00 that was due on November 1, 2014. The tenants disputed the notice, but the landlord didn't like that and hounded the tenants for the last 2 weeks of November constantly telling them that they had to move out. Around November 26, 2014 the landlord left a note on the door of the rental unit stating that the tenants had to move out because the landlord was going to renovate, but still hasn't started any renovations. The tenants moved out November 30, 2014 and are presently staying at a hotel at significant more cost.

The tenants seek monetary compensation in the amount of \$709.54 and return of the security deposit. The tenants have not provided the landlords with a forwarding address in writing.

Analysis

Once a tenant disputes a notice to end a tenancy given by a landlord, the landlord may not move the tenants out of the rental unit or require the tenant to move out until the dispute has been determined by the director, Residential Tenancy Branch. In this case, I am satisfied that the landlord ignored the *Residential Tenancy Act* and I accept the tenant's testimony that the landlord hounded the tenants, forcing them to move out on pain of a bailiff moving the tenants out.

I also accept that the tenants were permitted by the landlords to replace the base-board heaters, and such repairs are not the responsibility of the tenant. The tenant has provided evidence of the cost, and as a result of the landlord's failure to comply with the *Act*, I am satisfied that November's rent has been paid, and the tenants are entitled to recovery of that money.

With respect to the security deposit, the tenants have not made an application for that monetary order and therefore the landlord has not been put on notice. Further, the tenants have not provided the landlord with a forwarding address in writing. The *Act* states that the landlord has 15 days from the date the landlord receives the tenant's forwarding address in writing to return the security deposit in full or make an application for dispute resolution claiming against the deposit.

Conclusion

For the reasons set out above, the tenants' application for an order cancelling a notice to end tenancy for unpaid rent or utilities is hereby dismissed as withdrawn.

I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$750.00.

This order is final and binding and may be enforced.

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 05, 2014

Residential Tenancy Branch

