



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, 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 and to recover the filing fee from the landlord for the cost of this application.

The tenants and landlord attended the conference call hearing and gave sworn testimony. 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 cancel the Notice to End Tenancy?

Background and Evidence

The parties agreed that this month to month tenancy started on March 01, 2014. Rent for this unit is \$1,600.00 per month and is due on the 1st day of each month.

The landlord testified that the tenants failed to pay rent for December, 2014 of \$1,600.00. The tenants were served in person on December 02, 2014 with a 10 Day Notice to End Tenancy for unpaid rent. This Notice informed the tenants that they had five days to pay the rent or dispute the Notice or the tenancy would end on December

12, 2014. The landlord testified that the tenants did not pay the rent owed and have also failed to pay rent for January, 2015.

The landlord orally requested at the hearing that the 10 Day Notice be upheld and an Order of Possession issued to be effective as soon as possible.

The tenant GE testified that they withheld the rent because the landlord had not repaired the roof and the roof leaked into the tenants' unit. GE testified that they informed the landlord in writing in November, 2014 that the roof required repair but the landlord only made a temporary repair which has since blown off the roof. GE testified that they are saving the rent to go towards the roof repair deposit.

The tenants seek to have the 10 Day Notice to End Tenancy set aside and seek to recover their \$50.00 filing fee from the landlord.

The landlord testified that he went to look at the tenants' roof three times and it was not leaking and there was no evidence in the tenants' unit of recent water marks showing a leak had occurred. The landlord sent a roofer to look at the roof and they only found one small spot in the attic showing signs of damp. A temporary repair was made in this area on December 03, 2014 and leaves were cleared from the area. Any further repairs will be made after the winter. The landlord testified that since December 03, 2014 he has not received any further complaints about the roof from the tenants.

Analysis

Section 26 of the *Residential Tenancy Act (Act)* states:

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 tenants do not dispute that rent has not been paid for December, 2014 and January, 2015. The tenants claim they withheld the rent to pay for the deposit for a roofer to repair the roof as the landlord would not do the work. I refer the parties to s. 33 of the Act which deals with emergency repairs and states:

Emergency repairs

33 (1) *In this section, "emergency repairs" means repairs that are*

- (a) urgent,*
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and*
- (c) made for the purpose of repairing*
 - (i) major leaks in pipes or the roof,*
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,*
 - (iii) the primary heating system,*
 - (iv) damaged or defective locks that give access to a rental unit,*
 - (v) the electrical systems, or*
 - (vi) in prescribed circumstances, a rental unit or residential property.*

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;*

(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

In this matter the tenants have not paid any amounts to have the roof repaired and have not shown that the roof continued to leak after the landlord's roofer made a temporary repair and cleared the leaves on December 03, 2014. Consequently the tenants are not entitled to withhold any rent for an emergency repair that they have not paid for.

It is therefore my decision that the tenants have breached s. 26 of the *Act* and failed to pay rent for December, 2014 and January, 2015. Consequently, I uphold the 10 Day Notice to End Tenancy and the tenants' application to cancel the 10 Day Notice to End Tenancy is dismissed.

I refer the parties to s. 55(1) of the *Residential Tenancy Act (Act)* which states:

55 *(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

The landlord has orally requested an Order of Possession. Having upheld the Notice to End Tenancy I will grant that Order. The effective date on the Notice to End Tenancy in this matter was December 12, 2014. As that date has now passed, I grant the landlord an Order of Possession effective two days after service on the tenants.

Conclusion

I HEREBY dismiss the tenants' application in its entirety.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective two days after service on the tenants. This Order must be served on the tenants, if the tenants fail to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

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: January 07, 2015

Residential Tenancy Branch

