Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OLC PSF ERP RP

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

a) To order the landlord to provide services required by law;
b) To order the landlord to do emergency and other repairs pursuant to sections 32 and 33; and to order the landlord to comply with the Act.

Service:

The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that the landlord through act or neglect has failed to provide necessary services (or has withdrawn them) contrary to section 27 of the Act? Has the tenant proved on the balance of probabilities that the landlord has failed to repair contrary to sections 32 and 33 of the Act and that the landlord must be ordered to comply with the Act?

Background and Evidence

Both parties attended the hearing; the tenant was ten minutes late. Both parties were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in August 2014, there was no security deposit and rent is $950 a month. The property is a side by side duplex and these tenants rent one side. The landlord said that the tenants on the other side pay their own hydro; this tenant said they did not know the details but they understand that the tenants on the other side pay significantly more rent than they do. The parties agree that there is no written tenancy agreement.

The landlord said that the tenants viewed the house in July 2014 and were told the rent was $950 and they would put hydro and gas in their own names. He said he has the same arrangement with the duplex on the other side and they have hydro in their own names. He said these tenants moved in but never put the hydro into their own names.

The tenant said the landlord is partly correct but they never discussed putting hydro into their names until a few months later. They said they put the gas into their names and the female tenant said that when she told the landlord of the large deposit, he said it would be refunded when they moved out provided nothing was owed. They said that BC Hydro refused to put the hydro in their names but they also said that another room mate had tried to make the application to hydro when they first moved in and was told there was a large deposit of $800 which she could not afford and she moved out. They said they told the landlord about this and he said he would take care of it. Several times both tenants said they were on assistance and could not afford to pay the outstanding hydro bills that had accumulated since August 2014 or pay the deposit. They said the landlord wanted to use a shed on their property that they had cleaned and when the female tenant complained, he said to her something about them not paying their hydro, so…… She assumed he meant that he was covering their hydro so she should not complain. The landlord denied any such intention.

On their application, the tenants said they had lights on when they moved into the property in August 2014, and then on December 5, 2014, they received a disconnection notice from BC Hydro. They said they informed the landlord but he ignored it and one month later the hydro was disconnected. They were told the landlord had to supply proof of ownership on an application and he brought them a Bylaw Infraction Notice which did not satisfy BC Hydro who said they needed proof of title. They said the hydro was cut off on January 6, 2015 and the female tenant made an application on January 7, 2015 but she cancelled it on January 15, 2015 and said her room mate would call. The female tenant said she cancelled it because she had two weeks to pay and she could not afford it. However, they said they could not do another application afterwards because an inspection was necessary now. I enquired how they managed to have some lights and he said they did something with the breakers or fuses and got some lights working. They have not had any heat or most lights since January 6, 2015.

The landlord said they had had a fire and lost many documents and the only proof of title they had was the Bylaw Notice when the tenant called. However, he said the reason the inspection was needed was because service was cut due to the tenants not putting the hydro in their names and not paying the outstanding bill for the months they had lived there. He said he has had to serve a ten day notice to end the tenancy for they are not paying their rent either.

Included with the evidence are statements from the tenant and landlord, a Disconnection Notice dated December 5, 2014, a Bylaw Infraction Notice for untidy premises, a Notice of Disconnect dated January 28, 2015, a Reconnection Process Notice stating a permit would be required and an electrical inspection.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

The onus of proof is on the applicant tenant to prove on a balance of probabilities that the landlord is failing to follow the provisions of the Act and has failed to provide necessary services (or has withdrawn them) contrary to section 27 of the Act and that the landlord has failed to repair contrary to sections 32 and 33 of the Act.

The dispute concerned the supply of hydro. I find the tenant has not satisfied the onus of proving that the landlord did not supply necessary hydro or withdrew it. Although the tenants maintained the landlord was including the cost of hydro in their verbal agreement, I find insufficient information to support this allegation. I find the fact that a room mate made an application to put it into her own name early in the tenancy is inconsistent with the tenant thinking it was included in a verbal agreement. I find the tenant's assumption that the landlord was covering the cost because of some talk about a shed is not supported by any other evidence.

I find also the fact that the duplex on the other side pays more rent and their own hydro and the fact that these tenants put gas in their own names is inconsistent with their statement that the landlord agreed to supply hydro (which he denies). I find the tenants were given ample warning on December 5, 2014 that the hydro was to be cut off but they did nothing about it until it was disconnected on January 6, 2015. I find the female tenant then made an application on January 7, 2015 but cancelled it because she said she could not afford the deposit and costs that they had incurred for the months of their tenancy. The BC Hydro Notice supports the landlord's statement that inspection and certification are required only due to the disconnection that was caused by the tenant's own negligence in attending to the application process.

I also find insufficient evidence that any repairs are needed on the property.

Conclusion:
I dismiss the application of the tenant in its entirety without leave to reapply. No filing fee was involved.

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: February 17, 2015

Residential Tenancy Branch