



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding T & E HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for an order to the landlord to make repairs to the rental unit pursuant to section 32.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant was accompanied by a translator, who translated the proceedings and the tenant's testimony.

The tenant testified that he served the landlord with the dispute resolution package on 11 February 2015 by registered mail. The tenant provided me with a Canada Post customer receipt that showed the same. The agent testified that he was able to pick up the registered mailing until 27 February 2015 because he required evidence that he was an employee of the landlord. On the basis of this evidence, I am satisfied that the landlord was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act on 16 February 2015, the fifth day after the package's mailing.

Preliminary Issue – Landlord's Late Evidence

The tenant testified that he received the landlord's evidence 2 March 2015 at 2030. The landlord provided the Residential Tenancy Branch with this evidence on 3 March 2015. The agent testified that he provided the evidence late as he did not receive notice of this hearing until 27 February 2015.

The tenant did not consent to the admission of this evidence. The tenant stated that he only received one, double-sided page from the landlord. This page included both pages of the landlord's submissions; however, the handwritten portion of the letter was not included in the tenant's copy as the landlord testified that he added it after providing a

copy to the tenant. As well, the agent testified that he did not provide a copy of the letter from the tenant's neighbour to the tenant.

Rule 3.15 sets out that a respondent must receive evidence from the applicant not less than 7 days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.15 and the definition of days, the last day for the landlord to file and serve evidence in reply to the tenant's application was 24 February 2015.

This evidence was not served within the timelines prescribed by rule 3.15 of the Rules. Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

I do not consider the agent's submissions in respect of his actual receipt of notice of these proceedings persuasive. Section 90 of the Act creates a rebuttable presumption that service by registered mail results in receipt by a party five days after its mailing. The agent has provided me with insufficient evidence to rebut this presumption—the landlord was only prevented from receiving the mailing earlier through its own neglect.

In this case, the tenant did not receive copies of the landlord's evidence. As well, the tenant has limited English. The tenant testified that he did not have time to understand the landlord's evidence. On the basis that the tenant did not have enough time to understand the specifics of the landlord's evidence, I exclude all three pages of the landlord's evidence.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord make repairs to the rental unit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent and tenant, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began six years ago. The tenant testified that he has a written tenancy agreement with the landlord and that he pays his rent to the corporate landlord.

The tenant testified that in early January a pipe started making a constant humming noise. The tenant testified that for the last month he has been tortured by the noise. The tenant testified that when the agent came to investigate the tenant's complaint, the agent told the tenant that he could not hear anything and that the tenant should see a doctor. The tenant testified that a technician told him that the noise was coming from a defective water pump. The tenant testified that the technician attended at the rental unit twice in late January. The tenant submitted that the reason the noise just started is because of successive repairs that have been made to the pipes in the ceiling of his bathroom.

The agent testified that he has been in the rental unit many times and cannot hear the noise of which the tenant complains. The agent testified that the only noise he could hear was water in the pipes. Further, the landlord testified that the occupants of the rental units above the tenant cannot hear the same noise from the common pipe that they share. The agent testified that the technician told him that if the tenant is hearing noise it might be coming from a loose pipe. The agent testified that there is no water pump in the building.

The tenant seeks an order that the landlord stop the noise.

Analysis

Subsection 32(1) of the Act requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant. It is the tenant's onus to show that the landlord has failed to meet the requirements of subsection 32(1).

I have received testimony from the tenant that there is noise in the rental unit from a defective water pump. I have received testimony from the agent that there is no noise

in the rental unit and that there is no water pump. I have not been provided with any photographic, audio or documentary evidence to show me if the alleged defect is a breach of subsection 32(1) and requires the landlord to make repairs. I find that the tenant has failed to meet his onus to show that the repair is required to stop the noise or that any noise exists. I dismiss the tenant's claim without leave to reapply.

Conclusion

I dismiss the tenant's claim without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: March 04, 2015

Residential Tenancy Branch

