



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNR, MNDC, ERP, RP

Introduction

This hearing dealt with an application by the tenant seeking to have a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities set aside, a monetary order, an order to have the landlord make emergency repairs for health and safety reasons, and an order to have the landlord make repairs to the unit, site or property. Both parties participated in the conference call hearing. The tenants provided a tracking number to provide evidence that the landlord was duly served of this hearing along with their evidence. I am satisfied that evidence was served in accordance with the Act.

Issues to be Decided

Are the tenants entitled to any of the above under the Act, regulation or tenancy agreement?

Background and Evidence

The landlord gave the following testimony:

The tenancy began on or about January 1, 2015. Rent in the amount of \$850.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$425.00. The tenant failed to pay rent in the month(s) of February 1, 2015 and on February 1, 2015 the landlord served the tenant with a notice to end tenancy. The tenant further failed to pay rent in the month(s) of March. The landlord stated that he had agreed to reduce the rent payable for February by \$120.00. The landlord stated that once he had agreed to that, the tenants were seeking more and more

reductions that he was not prepared to agree to. The landlord stated that the tenants have attempted to get out of paying the rent by making up these false claims.

The tenants gave the following testimony:

The tenants stated that the landlord promised them that if they fixed up the unit they could deduct it from the rent. The tenants stated that the landlord went back on his word and that the text messages they have provided for this hearing support their position. The tenants stated that they have spent \$1000.00 and that they should not have to pay for the month of February. The tenants stated that they have already paid \$200.00 for the month of February and that along with the work they've conducted should be sufficient. The tenants stated that they want the landlord to conduct further repairs to the unit to remove mold and fix a water leak. The tenants stated they will pay the rent due for March as long as they are given credit for their work.

Analysis

As the tenants are the sole applicants in this matter I will address their application and my findings as follows.

I will first deal with the tenants' application to have the notice set aside.

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Although neither party supplied the notice for this hearing, both parties confirmed it was dated February 1, 2015. The landlord issued this notice prematurely as rent is due on the first and had yet to be late. The landlord will need to issue a new notice if payment of rent is not received or if the parties are unable to resolve the matter.

Based on the above and the testimony of the parties I hereby set aside the notice. It is of no effect or force. The tenancy continues on the original terms and conditions.

The tenants advised that they were seeking \$1000.00 of credit towards the rent and seeking repairs and emergency repairs. The tenants referred to some text messages that they have submitted for this hearing. After reviewing the digital evidence I am not satisfied that the tenants have provided sufficient evidence to support their claim. The text messages are scattered, vague and cannot be relied upon. I accept that discussions about possible arrangements were taking place but no firm agreement in regards to amount of credit and what type of work was to be conducted was agreed to.

In addition, the tenants submitted some photos of the unit and what they allege are emergency repairs and repairs that are required. They have failed to provide sufficient evidence to support this portion of their claim as well. Again, I accept there have been discussions about some repairs but the landlord gave testimony that these were essentially upgrades and not emergency repairs. As the tenants are the applicants, they bear the responsibility in providing sufficient evidence to support their claim; they have failed to do so.

Conclusion

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 1, 2015 is set aside. The tenancy remains in effect on the original terms and conditions on the tenancy agreement.

The remainder of the tenants' application is dismissed.

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: March 05, 2015

Residential Tenancy Branch

