



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, RP, RR, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy – Section 46;
2. An Order for emergency and other repairs – Section 32;
3. An Order for a rent reduction – Section 65; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Are emergency or other repairs required?

Is the Tenant entitled to a rent reduction?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on February 15, 2014 for a fixed term to end on February 15, 2017. Rent of \$1,900.00 is payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$950.00 as a security deposit. On March 5, 2015

the Tenant was given a 10 day notice to end tenancy for unpaid rent (the "Notice"). The unpaid amount on the Notice is \$1,900.00 due on March 1, 2015.

The Parties agree that the Landlord authorized the Tenant to make repairs for mold and heating, was informed of the cost and agreed to this cost and that the repairs were completed. The Tenant states that on March 2, 2015 the Landlord inspected the completed repairs and was paid in cash for the remaining rent of \$900.00. The Tenant described the cash paid and states that no receipt was provided for the cash. The Landlord denies that any cash was received. The Tenants state that the Landlord did not provide copies of rental receipts in its evidence package and state that no receipts were ever given to the Tenants. The Tenant states that rent has not been paid for April 2015 pending the outcome of this hearing but that they are prepared and have the full amount of rent available to pay the Landlord.

The Tenant states that the Landlord failed to rent them the unit without mold and that the Landlord was aware mold was present prior to the tenancy but had covered the mold with paint. The Tenant states that the back of the house with two bedrooms and a bathroom is unusable due to the exposed insulation and mold.

The Tenant states that repairs are required to:

- A sewer pipe and water pipes between the levels that are leaking;
- Mold in the unit;
- Rotten patio and missing railings; and
- Large broken beam in living room floor.

The Tenant claims a rent reduction. The Landlord agrees that repairs are required.

Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent the tenant must, within five days, either pay the full amount of the arrears indicated

on the Notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The burden of proof on the validity of a Notice lies with the landlord. I accept the Tenant's evidence of payment of \$900.00 rent on March 2, 2015 as credible and believable given the details of the payment and the ring of truth in the Tenant's testimony. Given the undisputed evidence that the Landlord agreed to the repairs to the unit and that these costs paid by the Tenant amounted to \$1,000.00, I find that the Landlord was effectively paid for this portion of March 2015 rent prior to the issuance of the Notice. As no monies were owed to the Landlord when the Notice was issued I find that the Notice is not valid and that the Tenants are entitled to an order cancelling the notice. The tenancy continues.

Given the Landlord's evidence that repairs as stated by the Tenant are required I order the Landlord as follows:

- To repair the sewer leak by April 18, 2015;
- To inspect the water pipe leaks by April 18, 2015 with any necessary repairs to be completed as soon as reasonably possible thereafter;
- To inspect the unit for mold by April 30, 2015 with any necessary repairs to be completed as soon as reasonably possible thereafter;
- To repair the patio and install rails by May 15, 2015; and
- To repair the living room floor by May 15, 2015.

Accepting that the unit had mold from the onset of the tenancy and that the mold is still present in the unit I find that the Tenant is entitled to a rent reduction of \$300.00 for April 2015. The Tenant has leave to reapply for further rent reduction and/or compensation should the Landlord fail to make the repairs as ordered.

As the Tenant has been successful with its application I find that the Tenant is entitled to recovery of the \$50.00 filing fee and I order the Tenant to reduce April 2015 rent by \$350.00. I order the Tenant to pay the remaining April 2015 rent of \$1,550.00 to the Landlord no later than midnight April 14, 2015.

Conclusion

The Notice is cancelled and of no effect. I order the Tenants to reduce and pay April 2015 rent as set out above.

The Landlord is ordered to make repairs as set out above.

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: April 13, 2015

Residential Tenancy Branch

