



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR; ERP; OLC; RP; RR;

Introduction

This is the Tenants' Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; an Order that the Landlord comply with the Act and make emergency and regular repairs to the rental unit; an Order that the Landlord provide services or facilities; and a reduction in rent.

The Tenants gave affirmed testimony at the Hearing.

The Tenants testified that they sent the Notice of Hearing documents and copies of their documentary evidence to the Landlord at the address given on the tenancy agreement, by registered mail, on October 13, 2015. The Tenants provided a copy of the Canada Post receipt and tracking number in evidence. The Tenants stated that the documents were returned to them, unclaimed, on November 5, 2015.

Based on the Tenants' affirmed testimony the documentary evidence provided, I am satisfied that the Landlord was duly served with the Notice of Hearing documents by registered mail. Despite being duly served with the Notice of Hearing documents, the Landlord did not sign into the teleconference and the Hearing proceeded in her absence.

Preliminary Matter

When a tenant seeks to cancel a notice to end the tenancy, the onus is on the landlord to provide sufficient evidence that the tenancy should end for the reasons provided on the notice. In this case, the Landlord (although duly served with the Notice of Hearing) did not provide any documentary or oral testimony and therefore **I find that the Landlord failed to provide sufficient evidence that the tenancy should end. Therefore, I cancel the Notice to End Tenancy and the tenancy will continue.**

The Tenants were cautioned that rent is due on the first day of each month and that failure to pay rent when it is due, or to repeatedly pay rent late, is reason to end a tenancy.

Issues to be Decided

- Should the Landlord be ordered to make repairs or provide services or facilities to the rental unit?
- Are the Tenants entitled to a rent reduction and if so, in what amount?

Background and Evidence

The tenancy agreement was signed on April 26, 2015. Monthly rent is \$645.00, due on the first day of each month. The Tenants provided a security deposit in the amount of \$322.50 at the beginning of the tenancy.

The Tenants stated that the hot water tank in the rental unit is 44 years old and has not been functioning properly since the beginning of the tenancy. They stated that they provided the Landlord with four written complaints, seeking repairs, but the Landlord has not repaired or replaced the hot water heater. The Tenants provided copies of the written complaints in evidence. The Tenants also provided a copy of an estimate from a plumber for the cost of replacing the hot water heater.

Analysis

I accept the Tenants' undisputed oral and written evidence. Section 32 of the Act requires the Landlord to provide and maintain the rental unit in a state of repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by the Tenants. I find that the Landlord has failed to comply with Section 32 of the Act. I also find that hot water is a service or facility that is essential to the Tenants' use of the rental unit as living accommodation.

Residential Tenancy Branch Policy Guideline #40 provides that the useful life of domestic water tanks is 10 years. The plumber's estimate provides, in part, "Hot water not functioning. Down tube is likely broken – needs new tank". Based on the useful life of a hot water tank and the comments made by the professional plumber, I find that the hot water tank in the rental unit requires replacement, and I ORDER the Landlord to have the hot water tank replaced no later than December 1, 2015.

Section 65(1)(f) of the Act allows me to reduce past or future rent by an amount that is equivalent to a reduction in the value of a tenancy agreement. The Tenants provided evidence that they first wrote to the Landlord about the lack of hot water on July 7, 2015. I find that the value of the tenancy has been diminished as a result of the Landlord's failure to comply with Section 32 of the Act. Therefore, I am making an order

with respect to rent abatement/reduction effective August 1, 2015, in the amount of \$75.00 per month until the hot water tank is replaced and fully functioning **and the Landlord is successful in an application to have the rent reduction stopped.** To be clear, once the Landlord has completed these repairs, the onus is on the Landlord to be successful in an Application for Dispute Resolution that the rent reduction should cease.

The Tenants are entitled to a past rent abatement for the months of August, September, October and November in the total amount of **\$300.00** (\$75.00 x 4 months), **which may be deducted from rent due to the Landlord.** Following deduction of the rent abatement, and until the Landlord is successful in an application to have the rent reduction stopped, rent will be **\$570.00.**

Conclusion

I ORDER the Landlord to provide the Tenants with a fully functioning hot water heater no later than December 1, 2015.

The Tenants may deduct **\$300.00** from rent due to the Landlord. **Commencing December 1, 2015 will be \$570.00** until the Landlord is successful in an application to have the rent reduction stopped.

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: November 13, 2015

Residential Tenancy Branch

