



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, MT, RR, FF

Introduction

The tenant applies to cancel a ten day Notice to End Tenancy for unpaid rent dated August 1, 2017 and received August 13 and an extension of time to apply. He seeks a repair order regarding a furnace and a rent reduction pending repair.

It was apparent that the tenant's application had been brought within five days after received the Notice and so an extension of time is not required.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Is the Notice a valid Notice to end the tenancy? Is the tenant entitled to relief regarding the furnace in the rental unit?

Background and Evidence

The rental unit is a three bedroom home. The tenant and his partner Ms. F. moved into the home in the Fall of 2013.

The gas furnace in the home has not worked for three years.

The respondent landlord acquired the property in the Spring of 2016. At that time the parties signed a written tenancy agreement for a month to month tenancy at a rent of \$1000.00 per month. The parties disagree about whether the landlord is holding any security deposit.

Only the tenant Mr. C. signed the agreement as the tenant. The landlords are shown to be Mr. K.B. and Mr. H.S.

Either at that time or shortly after, the rent was changed to \$950.00 per month. There is no written corroboration of that change but the parties agree. The tenant says it was because of the decrepit condition of the home including the furnace. The landlord says it was because the furnace did not work and the tenant agreed to heat the rental unit himself with portable electric heating.

The landlord has made some attempt to repair or replace the furnace. He says his efforts have been thwarted by the tenant. The tenant says the landlord did not give notice of entry and sent someone who did not appear competent for the job.

Analysis

The 10 Day Notice

The Notice claims the tenant failed to pay \$1000.00 rent due August 1. It is clear that the rent was not \$1000.00. It was \$950.00. For that reason, the Notice is not accurate and is therefore invalid. I hereby set aside and cancel the Notice.

It was noted at hearing that the tenant now owes \$950.00 rent for the months of August, September, October and November. He cannot withhold rent merely because his landlord may be in breach of his obligations.

The Furnace

I order that the landlord, at his cost, immediately attend to the repair or replacement of the furnace, including the cleaning of the furnace ducts and that such work be completed no later than November 30, 2017.

I direct that the rent shall remain at \$950.00 per month until the first of the month following the moment when the furnace starts working, at which time the rent will revert to \$1000.00 per month, due on the first of each month.. If the landlord completes this work by November 30, then the rent will rise to \$1000.00 on December 1.

If demanded by the tenant, the landlord will be required to give lawful notice of entry in accordance with the *Residential Tenancy Act*.

In the circumstances of this case, a rent reduction is not warranted.

Other

During the hearing tenant raised the issue about the general state of the premises. That is not an issue fairly encompassed by the tenant's application and so I decline to deal with it. The tenant is free to make another application in that regard if he wishes.

Conclusion

The tenant's application is allowed. The Notice is cancelled. The landlord is ordered to repair or replace the furnace, as set out above.

The tenant is entitled to recover the \$100.00 filing fee for this application. I authorize him to reduce his next rent due, December rent, by \$100.00 in full satisfaction of the fee.

This decision was rendered orally at hearing and 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 03, 2017

Residential Tenancy Branch