



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, RP

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to the landlord to make emergency repairs for health or safety reasons pursuant to section 33; and
- compensation for emergency repairs the tenant has made.

The landlord and tenant L.R. (the tenant) attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant stated that they would be representing the interests of both tenants at this hearing.

The landlord acknowledged receipt of the Tenant's Application for Dispute Resolution (the Application) which was personally served to them on September 22, 2017. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application.

The tenant testified that they provided evidence to the landlord and the Residential Tenancy Branch (RTB) on September 22, 2017. The landlord stated that they did not receive any evidence from the tenant and I find there is no evidence from the tenant before me.

Rule 3.14 of the RTB Rules of Procedure (the Rules) states that documentary evidence that is intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. I find that the tenant has not served the landlord or the RTB with their evidence in accordance with the Rules and as such I have only considered the testimony provided by both parties during the hearing.

The landlord admitted that he did not provide any evidence to the tenant or the RTB.

The tenant acknowledged receipt of the 10 Day Notice, which was personally served to her on September 10, 2017. In accordance with section 88 of the *Act*, I find the tenants were duly served with the 10 Day Notice.

I instructed the landlord to provide the 10 Day Notice to the RTB by the end of the next business day after the date of the hearing. As service of the 10 Day Notice to the tenant is the reason that the tenant filed the Application for this hearing, I find that the tenant is not prejudiced in accepting the 10 Day Notice as late evidence.

The landlord did submit a copy of the 10 Day Notice by the deadline noted above. As such, I have considered this documentary evidence.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to an order for the landlord to make repairs to the rental unit?

Are the tenants entitled to an order for the landlord to make emergency repairs for health or safety reasons?

Background and Evidence

The landlord testified that this tenancy began on February 01, 2010, with a monthly rent of \$675.00, due on the first day of each month. The landlord further testified that they currently retain a security deposit in the amount of \$350.00.

A copy of the unsigned 10 Day Notice, dated September 10, 2017, with an effective date of September 16, 2017, was provided by the landlord, as the tenants failed to pay rent for the month of September.

The landlord testified that the tenants are still in the rental unit and have not paid any rent since the 10 Day Notice was issued to them.

The tenant stated that they have replaced the door in the amount of \$300.00, completed repairs to electrical outlets with loose dangerous wires hanging out of them in the amount of \$300.00 and bought \$75.00 in rat traps.

The tenant testified that they have no heat in their unit. The tenant also testified that there is a leak under the sink that has needed repair. The tenant submitted that they called the landlord to make the repairs but that the landlord has not responded.

The landlord disagreed with the tenant's testimony that the tenants have called him about repairs needed and stated that damage to the rental unit is caused by the tenants. The landlord stated that the police attend the rental unit once a week due to the tenants' disturbances.

Analysis

Section 33 of the *Act* allows for a tenant to complete an emergency repair when the landlord has not completed the emergency repair in a reasonable amount of time.

Section 33(1) of the *Act* defines emergency repairs as made when the repair is urgent, necessary for the safety of anyone or for the preservation of use of residential property, for the purpose of repairing major leaks in pipes or roof, damaged or blocked water or sewer pipes or plumbing repairs, primary heating system, damaged or defective locks that give access to a rental unit, electrical systems or in prescribed circumstances, a rental unit or residential property.

Section 33(3) of the *Act* requires the tenant to make two attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs and allowing the landlord reasonable time to complete the repairs before the tenants are able to complete the repairs themselves. I find that the tenants have failed to provide any evidence showing that they made any emergency repairs and that they completed these emergency repairs in accordance with section 33 of the *Act*.

I further find that the tenants have provided no evidence to demonstrate that any repairs are required at the rental unit or that the need for any repairs met the definition of emergency repairs under section 33 of the *Act*.

For the above reasons, I dismiss the portion of the tenants' Application seeking compensation, and an order for repairs and/ or emergency repairs to be made, without leave to reapply.

Section 52 of the *Act* provides the following requirements regarding the form and content of notices to end tenancy:

In order to be effective, a notice to end a tenancy must be in writing and must

*(a) **be signed** and dated by the landlord or tenant giving the notice,*

- (b) give the address of the rental unit,
- (c) state the effective date of the notice,...and
- (e) when given by a landlord, be in the approved form...

While I have not made any determination on whether or not the tenants owe the landlord any rent, I find the 10 Day Notice is not signed by the landlord. For this reason I find even if the tenants do owe the landlord rent, the 10 Day Notice does not comply with the provisions of section 52(a) of the *Act* and is not a valid notice to end tenancy.

Therefore, I order, the 10 Day Notice is set aside and this tenancy will continue until ended in accordance with the *Act*.

Conclusion

I dismiss the portion of the tenants' Application for dispute resolution seeking compensation, and an order for repairs and/ or emergency repairs to be made, without leave to reapply.

However, I grant the portion of the tenants' Application seeking to cancel the 10 Day Notice to End Tenancy for Unpaid rent issued on September 10, 2017.

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 23, 2017

Residential Tenancy Branch