



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP, RR, FFT

Introduction

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

- cancellation of the landlord's 10 Day Notices to End Tenancy for Unpaid Rent (the 10 Day Notices) of June 2, 2018 and June 9, 2018, pursuant to section 46;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided in the amount of \$1,771.00, pursuant to section 65; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:46 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 a.m. Both tenants attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenants and I were the only ones who had called into this teleconference.

As Tenant HD (the tenant) confirmed that they were handed the first 10 Day Notice on June 2, 2018 and the second 10 Day Notice on June 9, 2018, I find that the tenants were duly served with these Notices in accordance with section 88 of the *Act*. The tenant gave sworn testimony that she handed the dispute resolution hearing package and written evidence package to the landlord's agent who has been their primary contact with the landlord on June 15, 2018. The other tenant (CP) gave sworn testimony that he witnessed the tenant hand the landlord's agent these materials on

June 15, 2018, as declared by the tenant. I also note that the landlord or the landlord's agent submitted extensive written evidence two days before this hearing, so had clearly received notification of the tenants' application and this hearing. I find that the landlord was served with the dispute resolution hearing and written evidence packages on June 15, 2018 in accordance with sections 88 and 89 of the *Act*.

Issues(s) to be Decided

Are the tenants entitled to reduce their rent for repair, services or facilities agreed upon but not provided by the landlord? Should the landlord's 10 Day Notices be cancelled? If not, is the landlord entitled to an Order of Possession? Should an order requiring repairs be issued against the landlord? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This one-year fixed term tenancy began by way of Residential tenancy Agreement (the Agreement) and an Addendum to that Agreement, signed by the parties on January 18, 2018. The tenancy is scheduled to run from February 1, 2018 until January 31, 2019. Monthly rent is set at \$3,000.00, payable in advance on the first of each month. Although the Agreement calls for the payment of a \$1,500.00 security deposit, the evidence before me shows that the landlord has claimed that the security deposit has never been paid.

The landlord's 10 Day Notices identify \$4,394.60 as owing as of May 31, 2018. As a 10 Day Notice cannot include unpaid security deposits as unpaid rent, the figures identified in the landlord's 10 Day Notices would need to be reduced by the \$1,500.00 security deposit, resulting in \$2,894.60 in unpaid rent that the landlord identified as owing as of the date of the two 10 Day Notices.

In their written evidence and in sworn testimony the tenants maintained that they had offered the landlord's agent full payments of the unpaid rent owing for both June and July 2018, but the landlord's agent had refused these payments.

Analysis

In the absence of the landlord or the landlord's agent to dispute the tenants' statements that their rent payments for June 2018 were refused by the landlord's agent, I allow the tenants' application to cancel the two 10 Day Notices issued in June 2018.

I also note that the tenants' evidence regarding their application for a rent reduction of \$1,771.00 was for materials that they purchased to repair the rental property as part of the Addendum to the Residential Tenancy Agreement they signed with the landlord on January 18, 2018. At the hearing, the tenants were unable to provide a breakdown of these materials; Tenant CP said that some of this cost was for a carport he repaired. They maintained that no part of this requested monetary award was for their labour.

I find that the rent reduction the tenants were seeking in this application was incorrectly identified as a rent reduction for repairs, services and facilities that were supposed to have been part of their tenancy according to their Agreement with the landlord. The tenants' application was in reality seeking a monetary award for losses they incurred in purchasing materials for work they undertook themselves for the landlord in repairing and renovating the rental property, as per the Addendum attached to their Agreement. To hear this portion of the tenants' application would be to deny the landlord a principal component of the rules of natural justice, to know the case against one and to have an adequate opportunity to address that case. As I find that the tenants' application did not accurately describe the nature of the monetary award they were seeking and the landlord was not properly alerted to this aspect of the tenants' application, I dismiss the tenants' application for a rent reduction.

The tenants remain at liberty to apply for a monetary award for materials the tenants purchased if they can demonstrate that their purchase of these materials had the landlord's prior approval, as was set out in the Addendum to their Agreement.

As the repairs identified in the tenants' application appear to be ones that the tenants themselves were primarily responsible for undertaking as part of their Agreement with the landlord, I issue no repair orders with respect to this tenancy at this time.

As the tenants have been successful in the primary part of their application, I issue a monetary Order in the amount of \$100.00 to enable them to recover their filing fee from the landlord.

Conclusion

I allow the tenants' application to cancel the two 10 Day Notices of June 2, 2018 and June 9, 2018. Those Notices are set aside and are of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I issue a monetary Order in the tenants' favour in the amount of \$100.00, which enables them to recover their filing fee from the landlord. The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the tenants' application for a rent reduction and for repairs.

As the tenants' application for a monetary award for materials they purchased for this rental property with the landlord's agreement was not properly before me, I dismiss this aspect of the tenants' application with leave to reapply.

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: July 27, 2018

Residential Tenancy Branch