Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, LRE, PSF

Introduction

This decision is in respect of the tenants' application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenants seek the following remedies:

1. an order cancelling a 10 Day Notice to End Tenancy for Unpaid Utilities (the "10 Day Notice");
2. an order for emergency repairs;
3. an order restricting or suspending the landlord's right to enter; and,
4. an order for the landlord to provide services or facilities required by the tenancy agreement.

A dispute resolution hearing was convened on December 6, 2018, and the landlord, his counsel, both tenants, a witness for the tenants attended the hearing. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

One of the tenants raised the issue of them not receiving any evidence from the landlord. Landlord's counsel advised that the tenants received all of the evidence that they would be relying on when they received the 10 Day Notice. I also note that all of the documentary evidence submitted by the tenants was identical to the evidence submitted by the landlord. As the tenants confirmed having received the landlord's documentary evidence on or about October 24, 2018—when the 10 Day Notice was served—and as the parties' documentary evidence essentially mirrors each other's evidence, I find that the tenants were sufficiently given for the purposes of the Act, pursuant to section 71(2)(c) of the Act.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

I note that section 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord's notice to end tenancy complies with the Act.

Issues to be Decided

1. Are the tenants entitled to an order canceling the 10 Day Notice?
2. If they are not, is the landlord entitled to an order of possession?
3. Are the tenants entitled to an order for emergency repairs?
4. Are the tenants entitled to an order restricting or suspending the landlord's right to enter?
5. Are the tenants entitled to an order for the landlord to provide services or facilities required by the tenancy agreement?

Background and Evidence

The landlord's central argument in response to the tenants' application is that the landlord filled up a propane tank located on the rental unit property, and that the tenants have failed to pay for the propane as required by the tenancy agreement.

On September 12, 2018, the tenants contacted the landlord and requested that the propane tank be filled. The weather was getting colder, and the tenants needed a full tank. On September 23, 2018, the propane was delivered, and the gas delivery company provided a copy of the invoice to the tenant, and then later to the landlord upon request. The invoice was for $400.90; a copy of the invoice was submitted into evidence. The next day, September 24, 2018, the landlord gave the tenants a written demand for payment of the propane within 30 days. A copy of this written demand was tendered into evidence. The landlord testified that he has not been paid to date, and that the tenant told him that they would not pay.

A 10 Day Notice was served on the tenants in person on October 24, 2018. A copy of the notice was submitted into evidence.

The tenant's primary argument is that they are willing to pay for the propane, but not until the propane burning furnace and hot water heater are repaired. Both parties testified at length about inoperable propane burning appliances. The parties did not dispute the fact that the furnace is not working. The tenants testified that they are without hot water, while the landlord testified that he was never made aware of this issue until recently.

The written tenancy agreement, a copy of which was submitted into evidence by both parties, includes an addendum. According to the agreement, the tenancy commenced on July 1, 2018, and is for a fixed term ending June 31, 2019. Monthly rent is $900.00 due on the first of the month. Page 2 of the agreement notes, as pointed out by the parties, that heat is not included in the rent. Nor is electricity.

Attached to the agreement is a one-page addendum, dated April 23, 2018, includes the following terms (reproduced exactly as written):

> 3)Approx 12% propane remains in rental tank(superior propane) at [address] as of April 23, 2018. Owner will remain renter of the tank and assume any rental cost and maintenance associated with the tank.
>
> The renter will be responsible for fuel consumed. The tank will be refilled initially in [initials] ~~April 30~~ by Superior propane and reimbursed by renter in 30 days. emergency fuel can be provided in the interim.

In their final submissions, the tenants argued that they "have no problem paying for propane" but that they expect the landlord to repair and make operable those appliances that burn the propane. They further submitted that the tenancy agreement only requires them to "pay for what we use". And, that as the appliances are inoperable, the tank is 100% full, with no fuel having been consumed.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Re Order Canceling the 10 Day Notice

Where a tenant applies to dispute a notice to end a tenancy, the onus is on the landlord to prove, on a balance of probabilities, the ground or grounds on which the notice is based. In this case, the 10 Day Notice was issued for unpaid utilities.

The landlord's position is that the tenants are responsible for paying for the propane, that they have not, and that the 10 Day Notice was issued for that reason. The tenant's position is that they are responsible for only paying for what they use. I am inclined to agree with the tenants' argument and submission for the following reasons.

Specifically, the term of the addendum reads (my emphasis added)

> The renter will be responsible for fuel *consumed*. The tank will be refilled initially in [initials] ~~April 30~~ by Superior propane and reimbursed by renter in 30 days. emergency fuel can be provided in the interim.

Notwithstanding that the second sentence in the language is rather unclear, it must be read in conjunction with the first sentence, which is clear: the renter is responsible for paying for the propane fuel consumed, or, as articulated by the tenants, "used." Fuel cannot be said to be consumed if it is being stored in a tank. Landlord's counsel did not address or respond to this aspect of the tenants' interpretation of the addendum, nor did the landlord dispute the tenant's submission that the tank remains full and unused.

In cases were there is an ambiguous term of an agreement, where a party disputes the term, and where neither party has provided additional evidence that might bring clarity to the term, I must apply the *contra proferentem* rule. *Contra proferentem* is a rule of contractual interpretation which provides that an ambiguous term will be construed against the party responsible for its inclusion in the contract. This interpretation will therefore favour the party who did not draft the term, because the party not responsible for the ambiguity should not be made to suffer for it. This rule endeavours to encourage the drafter to be as clear as possible when crafting an agreement upon which the parties will rely.

In this case, it is the landlord who was responsible for the inclusion of the propane use and cost recovery term into the addendum. Having found that the propane term is indeed ambiguous, made more so by the second sentence that follows the first, I apply

the rule of *contra proferentem* to that term of the addendum and find that the term does not require the tenants to pay for propane not consumed.

Taking into consideration all the evidence and testimony presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the ground on which the 10 Day Notice was issued.

As such, the landlord's 10 Day Notice, served on October 24, 2018, is cancelled and of no force or effect. The landlord is not entitled to an order of possession under section 55 of the Act, and thes tenancy will continue until it is ended in accordance with the Act.

Re Orders for Emergency Repairs and for Landlord to Provide Services/Facilities Required by the Tenancy Agreement

Both parties agreed that the furnace was inoperable and that it requires to be fixed. Section 33(1)(c)(iii) of the Act includes "the primary heating system" as one category of repairs that may fall under section 33 of the Act, which deals with the types of emergency repairs that a landlord is responsible for. Based on the undisputed evidence of the parties that the furnace and hot water system require fixing, I find that the tenants are entitled to an order for emergency repairs to the furnace.

Regarding the hot water appliance, while the landlord testified that he was unaware of any issues regarding this, based on the evidence of the tenants I find that the landlord is now aware, and that the tenants are entitled to an order that the landlord repair (and, thus, provide a service or facility required by the tenancy agreement).

Re Order Restricting or Suspending Landlord's Right to Enter

The tenants provided almost no evidence, oral or documentary, as to why they are entitled to an order restricting or suspending the landlord's right to enter the rental unit. From all accounts, the landlord has attempted to visit the rental unit property to conduct inspections and repair various items, but is met by somewhat resistant and unaccommodating tenants.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have not met the onus of proving their claim for an order that restricts or

suspends the landlord's right to enter. As such, I dismiss that aspect of their claim without leave to reapply.

Conclusion

I allow the tenants' application to cancel the landlord's 10 Day Notice. The landlord's 10 Day Notice of October 24, 2018 is hereby cancelled and of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

I order that the landlord make repairs to the furnace and hot water system within 30 days of receiving this Decision, and that the landlord provide proper notice to enter the rental unit pursuant to section 29 of the Act.

I further order that the tenants must provide the landlord with any and all reasonable access to the rental unit in order to effect these repairs, and that they must remove their pit bull from the property during the landlord's entry onto and into the rental unit property.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: December 6, 2018

Residential Tenancy Branch