Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, ERP, FF

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to cancel a Notice to End Tenancy for Unpaid Rent, for an Order requiring the Landlord to make repairs; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on February 01, 2019 the Application for Dispute Resolution and the Notice of Hearing were personally served to the Landlord. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act);* however the Landlord did not appear at the hearing.

Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent be set aside?
Is there a need for the Landlord to make electrical repairs?

Background and Evidence

The Tenant stated that:
- this tenancy began on October 01, 2017;
- rent of $1,200.00 is due by the first day of each month;
- on January 22, 2019 the Landlord personally served the Tenants with a Ten Day Notice to End Tenancy, which the Tenants did not submit in evidence;
- this Notice to End Tenancy declared that rent of $1,000.00 was outstanding;
- by January 04, 2019 all rent due had been paid;
- the heater in one of the bedrooms is not working.

Analysis

Section 46(1) of the *Residential Tenancy Act (Act*) authorizes a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

On the basis of the undisputed testimony I find that on January 22, 2019 the Landlord served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which was served pursuant to section 46(1) of the *Act.*

On the basis of the undisputed testimony I find that the Tenants had paid all the rent that was due for January of 2019 by January 04, 2019.

Section 46(4)(a) of the *Act* stipulates that a notice under this section has no effect if the tenant pays the overdue rent within five days of received a Notice to End Tenancy pursuant to section 46 of the *Act.* As all outstanding rent had been paid in full prior to service of the Ten Day Notice to End Tenancy, I find that the Notice was rendered ineffective pursuant to section 46(4)(a) of the *Act.* I therefore grant the Tenants' application to set aside this Notice to End Tenancy.

Section 32(1) of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. I find it reasonable to conclude that this section requires landlords to ensure that all heaters provided with the rental unit are functioning properly.

On the basis of the undisputed testimony I find that the heater in one of the bedrooms of the rental unit is not working. I therefore Order, pursuant to section 32(1) of the *Act*, that the Landlord repair this heater no later than March 30, 2019.

I find that the Tenants' Application for Dispute Resolution has merit and that they are entitled to recover the $100.00 paid to file this Application.

Conclusion

The Ten Day Notice to End Tenancy for Unpaid Rent that is the subject of these proceedings is set aside.

The Landlord must repair the heater in the bedroom no later than March 30, 2019.

Pursuant to section 72(2) of the *Act*, I authroize the Tenants to withhold $100.00 from one rent payment in compensation for the fee paid to file this Application for Dispute Resolution.

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: March 08, 2019

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Residential Tenancy Branch