



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, OLC

Introduction

On April 17, 2020 a hearing was held based on the tenant's application seeking an order that the landlord make repairs to the rental unit or property and an order that the landlord comply with the *Residential Tenancy Act*, regulations or the tenancy agreement, and an order was made, as follows:

1. The landlord shall have the swamp cooler inspected within 10 days of the date of this Decision by a qualified service provider;
2. The landlord shall forthwith have the swamp cooler maintained as recommended by the service provider during the inspection;
3. The service provider shall forthwith provide written confirmation of the details of the inspection and confirmation of completed maintenance, a copy of which shall be immediately provided to the tenant;
4. From now on, the above inspection and maintenance accompanied by written confirmation from a qualified service provider provided to the tenant, shall take place on or before the last days of April and October of each year.
5. If the landlord fails to carry out the terms of this Order, the tenant may deduct \$400.00 from his rent payable on the next due date following the non-compliance and continuing thereafter on the first of each subsequent month until such time as the landlord complies with the terms hereof.

On August 10, 2020, the landlord applied for a review consideration of the Decision issued on April 17, 2020 on the grounds that the landlord was unable to attend the April 17, 2020 hearing. The April 17, 2020 Decision was suspended until the Review Hearing is completed, and the landlord was ordered to serve the tenant with notice of the time and date of the Review Hearing along with a copy of the Review Consideration Decision within 3 days of receipt.

This Review Hearing was convened by way of conference call and was attended by the tenant and the landlord, who both gave affirmed testimony. The landlord was also accompanied by an assistant, who observed only and did not take part in the hearing.

At the commencement of the hearing I explained the order of testimony, and that each party would be permitted to question each other, however, the tenant was warned twice about interrupting the landlord's testimony, and after the third warning I closed the hearing preventing the tenant from cross examining the landlord, and I advised the parties that I would be making this Decision based on the in-chief testimony of the parties and evidence provided.

The *Residential Tenancy Act* specifies that after a Review Hearing I may confirm, vary or set aside the original order.

Issue(s) to be Decided

Should the April 17, 2020 Decision be confirmed, varied or set aside?

Background and Evidence

The tenant testified that this month-to-month tenancy began 17 years ago and the tenant still resides in the rental unit. Rent is currently \$676.00 payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$250.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a studio apartment in a complex containing about 48 units, and the landlord does not reside on the rental property. There is no written tenancy agreement.

The tenant further testified that the Review Consideration Decision dated August 12, 2020 requires the landlord to serve the tenant with notice of this hearing and a copy of the Review Consideration Decision within 3 days of receiving it, but the landlord didn't do so. The tenant received a document from the Residential Tenancy Branch about the landlord's Application for Review, so the tenant called the Residential Tenancy Branch and was advised of the information required, such as date, time and passcode to enter this Review Hearing. The landlord only served the tenant with a 1-page document in a tattered envelope by putting it under the tenant's door, which is the evidence provided by the landlord for this hearing. The Dispute Resolution automated system shows that the landlord filed the document as evidence for this hearing with an explanation that states: "This is an affidavit from my HVAC company that repairs and maintains all plumbing and heating and ventilation systems." The document is not an affidavit, but an Invoice dated August 3, 2020 with no amount due and no signature, but a statement. It states:

“With regards to the servicing of the swamp cooler on the roof of (the apartment building). The unit is serve in March and again in November every year. We do repairs and replacements as required. We have been advised of complaints from unit and have checked the unit every time. There is nothing abnormal or wrong with the unit. It runs the same as it has for the past 50 years. The tenant has requested our number so he can complain directly and I told (the landlord) not to give him our company information.

“As a professional HVAC plumbing contractor it is of my opinion that this tenant is exaggerating his problem for the sole purpose of trying to get the building manager in trouble with you people.”

The tenant further testified that he is still bothered at times by the HVAC system. When it gets colder outside, it bumps louder, as well as in hot weather, which confirms for the tenant that it's not being maintained properly. The tenant wants an order that the landlord have regular annual maintenance completed on the system and to maintain it by having it inspected every 6 months.

This is the fourth hearing that the parties have participated in, including the April 17, 2020 hearing. The tenant testified that an order was made after the first hearing wherein the landlord said he'd take steps to do the annual maintenance and inspections.

The landlord testified that he did not serve the Review Consideration Decision to the tenant, or the notice of this hearing, and that it was mailed to the tenant directly from the Residential Tenancy Branch.

The landlord further testified that a Residential Tenancy Branch Compliance Enforcement Officer has been in touch with the landlord about this issue. The Compliance Enforcement Officer had a conversation with HVAC mechanics and repairs are made when necessary.

The landlord further testified that this is apparently the only suite that's affected, and the landlord has offered the tenant a different suite.

Analysis

Firstly, the only evidence provided for this hearing by the landlord is the Invoice described by the landlord as an affidavit. However, it is not an affidavit at all. It is not sworn, nor is it signed by anyone. It is simply a statement by an unknown source. I see no reason to vary or set aside the original Decision and orders.

I am not satisfied that the landlord has established any defence to the tenant's original application, and I confirm the Decision and order of the Director made on April 17, 2020.

Conclusion

For the reasons set out above, the Decision and orders of the director made on April 17, 2020 is hereby confirmed.

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: September 15, 2020

Residential Tenancy Branch