



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNR, RR, RP, LRE**

Introduction

This hearing dealt with an application by the tenants pursuant to the Residential Tenancy Act ("Act") for orders as follows:

- Cancellation of the landlord's 10 Day Notice to End Tenancy ("10 Day Notice") pursuant to section 46 of the Act
- For an order to reduce rent for repairs, services, or facilities agreed upon but not provided pursuant to section 65 of the Act
- For an order requiring the landlord to make repairs to the property pursuant to section 32 of the Act
- For an order suspending or setting conditions on the landlord's right to enter to the rental property pursuant to section 70 of the Act

Landlord SD appeared and tenants AC and AC appeared with agent CL. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenants confirmed receipt of the 10 Day Notice which is unsigned with an effective date of December 2, 2022. Pursuant to section 88 of the Act the tenants are found to have been served with this notice in accordance with the Act.

Preliminary Issue – Service

The parties each testified that they received the respective materials, and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

However both parties produced their documentary evidence late based on RTB Rules of Procedure 3.14 and 3.17. All of the landlord's evidence was provided three days prior to the hearing. Rule 3.17 of RTB Rules of Procedure states that the respondent must provide their evidence no later than seven days prior to the hearing. I will not consider the respondent's documentary evidence based on the requirements of Rule 3.17.

The tenants submitted evidence on various dates. Some evidence was submitted on November 25, 2022. Some evidence was submitted December 7, 2022. Evidence was submitted March 17, 2023, 13 days prior to the hearing. Evidence was submitted March 23, 2023, 7 days prior to the hearing. Some evidence was submitted March 29, 2023, one day prior to the hearing. I further note that RTB Rules of Procedure 3.13 requires that evidence be submitted in a single package. Failure to do so requires the tenants to explain why the evidence was not submitted as a single package. No explanation was provided by the tenants for their failure to provide the evidence in a single package. It appears that the subsequent evidence that was submitted late was available to the tenants at the time they filed their application for dispute resolution. Based on Rule 3.14 I will only consider the tenants' evidence that was submitted not later than 14 days prior to the hearing.

Issue(s) to be Decided

1. Is the 10 Day Notice valid and enforceable against the tenants? If so, is the landlord entitled to an order of possession?
2. Are the tenants entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit or site?
3. Are the tenants entitled to an order requiring the landlord to make repairs?
4. Are the tenants entitled to a rent reduction due to the landlord's failure to make repairs as required?

Background and Evidence

The tenancy commenced August 1, 2020 and is on a month to month basis. Rent is \$2,300.00 per month due on the first of the month. The landlord holds a security deposit of \$1,150.00 in trust for the tenants.

10 Day Notice

The tenants' submissions were made almost entirely through their agent who represented them in the hearing. The tenants noted that the 10 Day Notice was not signed by the landlord. The 10 Day Notice is also not dated in the place on the notice that provides for a date.

The landlord stated that he signed the 10 Day Notice.

Rent Reduction

The tenants submitted that they have experienced ongoing issues with the heating since February 2022. They submitted that heat is included in the tenancy agreement. In On May 17, 2022 the heat went off in the rental unit. On September 6, 2022 the heat was turned back on. The heat went off again on September 30, 2022. It was turned back on November 1, 2022 and was on until December 15, 2022. On December 15, 2022 the heat went back off and has remained off until the date of the hearing. The tenants' agent stated that the tenants advised the landlord May 22, 2022 and June 14, 2022 about the issues with the heat. The tenants' agent also stated that the tenants wrote to the landlord regarding the heat issues on June 21, 2022 and June 27, 2022. The landlord did not respond to their requests.

The tenants submitted through their agent that lack of heat constitutes an emergency repair based on section 33 of the Act.

The tenants' agent stated that they started to experience issues with the plumbing in February 2022. The toilet was not filling, and the bathtub was not draining. They submitted a request for repairs to the landlord on February 23, 2022. The plumbing issues were resolved on August 30, 2022, but on September 2, 2022 the bathtub filled with sewage which the tenants had to manage until the issue was resolved on September 5, 2022. Additionally, from February 2022 to July 2022 the tenants' septic tank was overflowing.

The tenants are seeking a 20% reduction in rent from February 2022 to September 2022 in the amount of \$3,680.00. They are seeking a 25% reduction in rent from June 2022 through August 2022 for an amount of \$1,725.00. They are seeking a 50% reduction in rent for May 2022, and September and October 2022 for an amount of \$3,450.00. The tenants also requested an amendment to their application to include a rent reduction for lack of heat since their application was filed. They are seeking a reduction of rent of 25% for December 2022 in the amount of \$1,725.00, and a 50% reduction in rent for January through March 2023 in the amount of \$3,450.00.

The landlord stated that the heating issues were caused by the tenants who were not properly using the heating panel. He attempted to enter the rental unit to assess the

situation, but the tenants would not allow access. He did not provide a 24-hour written notice to enter the rental unit to the tenants.

Request for Repairs

The tenants stated through their agent that their dryer broke, and they repaired it. They wished to be reimbursed for their expense. The tenants stated that laundry was not specifically included in the tenancy agreement. Based on Rule 3.14 of the RTB Rules of Procedure I have not considered the tenants' documentary evidence on this ground.

The landlord provided no submissions on the repair of the dryer.

Analysis

RTB Rules of Procedure 6.6 states, "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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenants apply to cancel a Notice to End Tenancy." In this case, the landlord has the burden of proving the validity of the 10 Day Notice served on the tenants.

10 Day Notice

I find that the landlord did not sign the 10 Day Notice. Section 52 of the Act requires that a notice to end tenancy comply with certain requirements in order to be valid. One of the requirements is that the landlord sign the notice. As the 10 Day Notice was not signed, I find that the notice did not comply with section 52 and is not a valid notice. The tenants' application with respect to the 10 Day Notice is granted. The 10 Day Notice is cancelled.

Compensation

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. As noted in Policy Guideline #16, in order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it

stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove their entitlement to a claim for a monetary award.

Rent Reduction

I find that the tenants have not satisfied their onus to establish their entitlement to a rent reduction and compensation for the following reasons.

As I did not consider the tenants documentary evidence, there is no documentary evidence in support of their claims regarding heat or plumbing issues. There is no documentary evidence showing that the tenants requested repairs from the landlord. There is no photographic evidence of the plumbing and sewage issues.

The tenants provided very little testimony about the heat and plumbing issues in the hearing and instead relied on submissions of their agent, which is not evidence. Notably the tenants did not dispute the landlord's assertion that they refused to allow the landlord to enter the rental unit to assess the situation. While the landlord did not provide notice to enter based on the Act, the tenants also submitted through their agent that the repairs were of an emergency nature. Section 29 of the Act allows the landlord to enter the rental unit without notice in an emergency. As the tenants refused entry to the rental unit, they did not satisfy their duty to mitigate their loss. RTB Policy Guideline 5 states in part:

A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided. In general, a reasonable effort to minimize loss means taking practical and commonsense steps to prevent or minimize avoidable damage or loss. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:

- remove and dry the possessions as soon as possible;
- promptly report the damage and leak to the landlord and request repairs to avoid further damage;

- file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.

Compensation will not be awarded for damage or loss that could have been reasonably avoided.

In this case, failure to allow the landlord to enter the rental unit constitutes a failure by the tenants to mitigate their loss. The tenants' dispute application on this ground is dismissed without leave to reapply.

Request for Repairs

The tenants are claiming compensation for repair of a dryer. Based on Rule 3.14 I have not considered the tenants' documentary evidence in support of this claim. Additionally, it is undisputed that laundry was not included in the tenancy agreement. Under section 32 of the Act, the tenants are only required to make repairs of damage caused by them. The dryer is not an emergency repair. I have no evidence before me that the landlord agreed to allow the tenants to repair the dryer and that the landlord would reimburse them for the cost. I do not have evidence before me of the cost to repair the dryer, as I have not considered the tenants' documentary evidence. The proper recourse for the tenants was to notify the landlord of the need for repairs.

The tenants' dispute application on this ground is dismissed without leave to reapply.

Conditions on the Landlord's Entry into the Rental Unit

The tenants made no submissions on this ground. Therefore, the tenants' claim on this ground is dismissed without leave to reapply.

Conclusion

The tenants' application disputing the 10 Day Notice is granted. The tenancy shall continue until it is ended in accordance with the Act.

The tenants' application for compensation and to restrict the landlord's entry into the rental unit is dismissed without 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: April 4, 2023