



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE CANADA LIFE ASSURANCE COMPANY
("CHRONICLE") and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, RR, RP, FFT

Introduction

The tenants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The tenants ask me for the following orders against the landlords.

1. Cancellation of a 10-day Notice to End Tenancy for Unpaid Rent, issued on or about 18 April [the 'Notice'].
2. Reduction of rent for repairs to the unit [the 'Rent Reduction Claim'].
3. Direction that repairs to the unit be made [the 'Repair Claim'].
4. Reimbursement for the \$100.00 filing fee for this application.

The corporate landlords appeared at the hearing on 9 June 2023 by way of an agent ['Agent 1']. The tenants also appeared.

Issues to be Decided

Have the tenants failed to pay rent in the amount to which the parties have agreed?

Must rent be reduced to compensate the tenants for repairs that needed to be made to the unit?

Must the landlords repair the unit?

Should the landlords reimburse the tenants for the cost of filing this application?

Background and Evidence

The parties agreed that normally the tenants pay the landlords \$5,020.00 every month for rent.

During this tenancy, when the tenants have had an issue about services to the rental unit, they have dealt with a particular agent for the landlords, entitled a 'property administrator' ['Agent 2']. And in December there was an issue with a service to the rental unit: the heating.

The parties agree that it was an unusually cold month. While the tenants told me that the heating system was incapable of adequately heating the unit in such cold conditions (they wanted to raise the temperature to more than 17 degrees), Agent 1 told me that the landlords supplied space heaters to the tenants to compensate for the problems with the heating system.

The tenants felt that the space heaters were insufficient. And so they decided to withhold \$1,053.60 from their January-rent payment [the 'Withheld Rent']. They communicated to the landlords their decision *via* an e-mail to another agent for the landlords, entitled a 'community manager' ['Agent 3']. Agent 3 replied the same day, saying he would get back to the tenants about this issue.

Then, in early January, Agent 2 wrote an e-mail to the tenants about the Withheld Rent. The tenants replied, referencing earlier communications with the landlords about withholding the rent, and copying Agent 3. And in response, Agent 2 wrote back, saying, "Please disregard this email. This will be taken out from your file. I sincerely apologize for this." [the 'Agent 2 E-mail']. Agent 2 copied Agent 3 on her response.

During this hearing, neither party directed me to any further e-mails or communications from Agent 3 regarding this issue.

Some months later, on 18 April, another agent for the landlords ['Agent 4'] drafted the Notice. I reviewed a copy of this Notice, and noted the following:

1. it was in the form approved by the RTB;
2. it was signed and dated;
3. it recorded the address of the rental unit;
4. it recorded the effective date of the Notice as 1 May 2023;

5. it stated the basis for the Notice as the tenants' failure to pay rent due 1 April 2023 in the amount of the Withheld Rent, and utilities due 14 April in the amount of \$208.13 [the 'Utilities']; and
6. it was served on the tenants *via* e-mail, which they had provided as an address for service.

Agent 4 did not participate in this hearing. But Agent 1 told me:

1. Agent 4 is entitled a 'property manager';
2. the landlords never sent a written demand for payment of these Utilities to the tenants; and
3. the landlords also served the Notice by posting it on the door of the unit (but Agent 1 clarified that he did not himself post the Notice on the door: he did not know who did).

The landlords did not submit any documentation indicating that the tenants had agreed to be served *via* e-mail.

The tenants clarified that they did pay full rent for April, and Agent 1 did not dispute this (other than to say that rent remained outstanding from January). They also told me that they had never had any dealings with Agent 4 during their tenancy.

Analysis

I have considered all the statements made by the parties and the documents to which they referred me during this hearing. And I have considered all the arguments made by the parties.

I asked the tenants about the nature of their Rent Reduction Claim and the Repair Claim, and they clarified that these claims are merely iterations of their application to cancel the Notice. In other words, they told me that these two claims deal with the December-heating problem, and that if I deal with the issue of the Withheld Rent, then that addresses these two other claims.

In essence, the tenants argue that they were entitled to withhold rent for 'emergency repairs' (though they conceded that they made no such repairs, which effectively collapses that argument). And the landlords argue that the tenants were simply not entitled to withhold rent.

The tenants also argued that the Agent 2 E-mail proves that the landlords have already accepted that they could withhold rent. For their part, Agent 1 told me that Agent 2 had

no authority to accept the tenants' proposal to withhold rent, and that properly only Agent 4 had such authority. He didn't offer an opinion on Agent 3's authority...

I find that in essence the tenants have raised an issue of 'estoppel'. That is, are the landlords prevented (or, 'estopped') from now claiming (*via* Agent 1) that the tenants weren't allowed to withhold rent, when the landlords earlier (*via* Agent 2) agreed that they were?

I answer, 'yes'.

While the wording of the Agent 2 E-mail may be ambiguous in isolation, I'm satisfied that, in the context of the tenants' communications with Agents 2 and 3, that Agent 2 accepted on behalf of the landlords the proposal to withhold rent.

I do not agree that the tenants ought to have suspected that Agent 2 didn't have authority to accept this proposal, and instead should have contacted Agent 4 (with whom they had never dealt). The Agent 2 E-mail also went to Agent 3: if there had been some issue with the arrangement as accepted by Agent 2, then I heard nothing from Agent 1 to suggest that Agent 3 couldn't have stepped in to correct any such issue.

This does not mean that the tenants were entitled to withhold rent: they conceded that they had made no emergency repairs, and could not support the notion that they could withhold rent for any other reason. What it *does* mean is that the landlords accepted the 'deal' offered by the tenants, and now the landlords must live with it.

So, while the Notice alleges that the tenants failed to pay full rent for April, I accept they paid both:

1. full rent for April; and
2. the reduced rent for January as agreed upon by the parties.

But another basis for the Notice is the unpaid Utilities. Section 46 (6) of the *Residential Tenancy Act* [the 'Act'] requires a landlord to first issue a written demand for payment of utilities and, if 30 days after that demand the utilities are still unpaid, then the landlord can treat the unpaid utilities as unpaid rent.

That did not occur in this case, and so the Utilities are not a valid basis for this Notice. This does not mean that those Utilities are not owing: it simply means that I cannot order the payment of utilities as part of this application. The landlords are free to bring their own application for payment of these Utilities.

Also, I do not accept that the landlords properly served the Notice. The landlords had no direct evidence of having posted it to the door of the unit, and I do not accept that they can serve it upon the tenants *via* e-mail without prior agreement by the tenants.

For all these reasons, I grant the application and cancel the Notice.

Conclusion

I cancel the Notice, and – as the tenants concede that, in doing so, this addresses the Rent Reduction Claim and the Repair Claim – I dismiss those remaining claims without leave to re-apply.

As the tenants succeeded in their application, I order that they may reduce their next rent payment (for August rent) by \$100.00 in compensation for the fee they paid to file this application.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 5 July 2023

Residential Tenancy Branch