



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, ERP, RP, RR, FF, O

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy, an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement, and a rent reduction.

The hearing was conducted via teleconference and was attended by both tenants and one of the landlords.

At the beginning of the hearing the landlord entered and exited the call at least 3 times prior to joining the hearing for most of the remainder of the hearing. However at approximately 12:00 just near the end of the hearing the landlord stated she had a real job that she was impacting by being in this hearing and that it had gone on too long already and the landlord exited the hearing. The hearing continued for another 10 minutes.

The landlord testified that she had tried to submit evidence to the Residential Tenancy Branch (RTB) and they refused to accept it. The landlord states that she had been told that because the tenant's had paid the rent and because utilities were not covered in the tenancy agreement that the notice was no longer valid and she did not need to provide evidence to the hearing.

Even if the landlord had been informed that the notice was no longer valid, I find it very unlikely that the any staff of the RTB would have refused to accept any evidence for a dispute that had been scheduled for a hearing without any request to cancel the hearing from the applicant, in this case the tenants, especially when the hearing involved other issues than just the notice to end tenancy.

During the hearing I ordered both parties to provide me with a copy of the tenancy agreement and any other written agreements that may be pertinent to the tenancy and this dispute, no later than the end of business on October 16, 2012. Both parties provided documents as ordered.

The tenants provided a copy of a tenancy agreement; a letter from the female tenant's father; and a letter from the landlord to the tenant dated September 13, 2012 regarding the utilities.

The landlord provided copies of the following relevant documents: a rental application; a document called "Rental Binder & Deposit Receipt"; a tenancy agreement; letters from the landlord to the tenants dated July 12, 2012 and September 11, 2012 regarding utility arrears.

Both parties have provided a copy of a letter from the tenants to the landlord dated August 8, 2012 outlining repairs requested and stipulating that they will not be paying any utility bills until the repairs are completed and requesting copies of bills for all utility claims.

The landlord has also provided the following documents that I have not considered: "Financial Responsibilities Timeline" as it was not requested in my above order and not submitted prior to the hearing; copy of a dishonoured cheque from the tenants as it has no relevance to the matters before me; a receipt for a furnace replacement as the landlord had not provided this into evidence prior to the hearing and the tenants did not have an opportunity to respond to it, as noted further in this decision.

Prior to this decision, I wrote an interim decision on October 15, 2012 ordering the landlord to immediately reinstate electrical service to the rental unit. This decision must be read in conjunction with the decision of October 15, 2012.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to an order to have the landlord make repairs and emergency repairs; to allow the tenants a reduced rent for repairs not provided and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 33, 46, 67, and 72 of the *Act*.

Background and Evidence

Both parties provided a copy of a tenancy agreement signed by the tenants only on April 2, 2012 for a 1 year and 1 day fixed term tenancy beginning on April 2, 2012 for a monthly rent of \$1,400.00 due on the 2nd of each month with a security deposit of \$700.00 and a pet damage deposit of \$700.00 required.

The landlord's document entitled "Rental Binder and Deposit Receipt" showing agreement between the parties that they will enter into a tenancy agreement. The agreement stipulates that tenancy will begin on April 1, 2012; rent will be \$1,400.00; a tenancy agreement will be signed for a fixed term of 1 year; there will be a security deposit of \$700.00 and a pet damage deposit of \$700.00 and the landlord will supply heat, hot water, a refrigerator, and stove.

The tenants submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued by the landlord on September 18, 2012 without an effective vacancy date citing the tenants had failed to pay rent in the amount of \$1,400.00 for the month of

September 2012 and failed to pay \$581.88 for utilities after a written demand was provided to the tenants on September 6, 2012.

The parties agreed the tenants paid rent in full but have not paid any of the utilities identified on the Notice to date. The tenants have submitted into evidence a copy of an undated letter that they testified they received on September 13, 2012 from the landlord outlining the amount of \$581.88 being outstanding.

The landlord testified she had provided the tenants with two other similar letters; one in July and one on August 14, 2012. The letter refers, in part, to a deposit for hydro for which the tenants submitted a copy of a bill they received from the landlord for the deposit with a billing date of August 24, 2012. The landlord testified that they were aware of this amount on August 14, 2012 because they had looked the account up on the hydro website.

The tenants submit that while there were several repairs that had been originally required the landlord has completed or partially completed some of the repairs. The tenants seek a rent reduction and an order to have the landlord repair the furnace; to clean up the yard and provide unobstructed access to all points of entry to the rental unit; to ensure the oven and dryer are working properly; to repair two outlets in the dining room/kitchen; and ensure electrical service is restored to the entire rental unit.

The landlord testified that it is the tenant's responsibility to complete yard work as per the tenancy agreement; that there is nothing wrong with dryer or the oven; and that she has turned off the utilities because the tenants have failed to pay any monies towards utilities.

The landlord submits the tenants agreed, in writing, to pay 2/3 of the utilities by the 2nd of each month and they have failed to pay anything to date for the utilities. The tenants submit that after the landlord provided them with bills for utilities they were concerned the landlord was not calculating the amounts owed appropriately. The tenants did not dispute agreement for 2/3 of the utility costs.

As an example the tenants have submitted bills provided to them from the landlord in which 2 of the bills show a credit to the landlord's account and the landlord is attempting to collect a payment from the tenants for those credits as if they were debits to her account.

The landlord also testified that there was a new furnace installed in the residential property within the last week or so. The landlord also testified that she had been told by the furnace service provider that the furnace was no longer working because the tenants had had the furnace running all summer with the windows opened.

The tenants state that they did not have the furnace running all summer but rather the fan was running because the landlord had failed to service the furnace and a belt was not working properly.

While discussing how to allow the landlord to submit a copy of her bill for the new furnace, so that the tenants might have an opportunity to respond to the issues related to a new furnace, the landlord stated that she had spent enough time on these issues and she was not prepared to provide the tenants with anything further or remain in the hearing. The landlord then left the conference call.

Analysis

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

Section 46(6) states that if a tenancy agreement requires the tenants to pay utility charges to the landlord and the charges are unpaid more than 30 days after the tenant has been given written demand for payment of the charges the landlord may treat the unpaid utility charges as unpaid rent and may give notice under Section 46 to end the tenancy.

From the testimony provided by both parties, I find the landlord has failed to establish that the tenancy agreement requires the tenants to pay the landlord for utilities and she had provided the tenants with a demand letter for utilities at least 30 days prior to issuing the 10 Day Notice to End Tenancy.

Further, the 10 Day Notice completed by the landlord herself, states that the landlord had provided the written demand for the payment of utilities on September 6, 2012. This statement is in direct contravention to the landlord's testimony that she provided the tenants with the demand letter on August 14, 2012.

For these reasons and because the tenants have paid the rent in full, I find the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities to be ineffective and not enforceable.

In regard to the tenant's requests for repairs I find as follows:

1. Restore electrical service to entire unit – dealt with in my Interim Decision dated October 15, 2012;
2. Yard work – I find no term or addendum attached to the tenancy agreement or in the "Rental Binder" that would indicate the tenants are responsible for the yard work. As such, I order the landlord to clean up the yard of the residential property and to ensure there is unobstructed access to all entry points of the rental unit at all times;
3. Appliances – as it is not clear as to why the tenant's could not use the oven for several months during the tenancy or why it takes several hours to dry a load of clothing, I order the landlord to have a certified appliance specialist, other than

relative, examine the appliances to determine if there are any deficiencies and if there are any, to have them repaired;

4. Electrical Outlets – I accept there remain two electrical outlets that are not working properly and I order the landlord to repair these outlets;
5. Furnace – as I was not able to consider the landlord's evidence regarding the furnace because the landlord left the hearing without agreement on a process to provide the evidence to the tenant I cannot confirm whether or not the landlord has repaired or replaced the furnace. As such, and in the absence of any evidence to support the landlord's claim that the repairs are required because of actions of the tenants, I order the landlord to repair the furnace.

I further order that until such time as the landlord completes all of these repairs the tenants are allowed to reduce their rent to \$1,200.00 per month. In order to reinstate the rent to the amount listed in the tenancy agreement, the landlord must obtain an order from a Dispute Resolution Officer confirming that the repairs are completed and they are entitled to reinstate the rent.

In relation to the utilities, I find no agreement between the parties in regards to the payment of utilities, however, I accept based on the undisputed testimony of the landlord that the tenants are responsible for the payment of 2/3 of utility charges for hydro and gas.

To determine the amounts owed to the landlord for hydro and gas, I order that the landlord must provide to the tenants with a copy of each bill for the specific period billed; a breakdown of what she expects as the tenant's portion; and provide the tenants with a reasonable time to pay these amounts once presented with the bills.

I have made no rulings on specific amounts owed because I am not satisfied I have received all utility bills for both gas and hydro or a record of any payments made for the duration of the tenancy. While I make no rulings on any specific amounts owed by the tenants in relation the monthly bills for gas, I note that from the bills that show the landlord has a credit with the gas utility these credits result from the landlord overpaying and other credits to her account unrelated to the usage in that period.

As such, I find the tenants are responsible for their portion of the usage of utilities for that period. For example, in the bill dated July 17, 2012 that shows a credit of \$37.92 based on an overpayment from the previous bill (\$200.00) but the usage for the period is still charged to the landlord and reduced the overall credit – the tenants are responsible for 2/3 of that usage.

In relation to the landlord's attempt to charge the tenants with the amount she was charged by her hydro provider as a security deposit for failure to pay the hydro bill on time (\$267.00) I find that the hydro account is in the name of one of the landlords and as such the landlord has a contractual obligation to her hydro provider to make payments for the hydro usage that is independent of the landlord/tenant relationship.

Despite the landlord's submission that they have an agreement with the hydro provider to charge the deposit to the tenants, the landlord has provided no evidence to support this submission or to show how it would actually work when the account is in the landlord's name.

As such, I find, the tenants cannot be held responsible for the landlord failing to meet her contractual obligations to a third party regardless of any amounts owing to the landlord by the tenants for utilities and I order the landlord cannot charge the tenants with the \$267.00 security deposit for hydro.

Conclusion

I grant the tenants' Application to dismiss the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and find the tenancy remains in full force and effect. I also grant the majority of the other issues in the tenants' Application as noted above.

As the tenants were mostly successful in their Application I order they are entitled to recover the filing fee of \$50.00 from the landlord and in accordance with Section 72(2)(a) the tenants may deduct this amount from a future rent payment.

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: October 16, 2012.

Residential Tenancy Branch