

## **DECISION**

Dispute Codes      DRI ERP RP

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to dispute a rent increase and to obtain an Order to have the Landlord make emergency repairs and to make repairs to the unit, site or property.

Service of the hearing documents, by the Tenant to the Landlord's Agent, was done in accordance with section 89 of the *Act*, served personally to the Agent on approximately February 5, 2010.

The Landlord, Landlord's Agent and both Tenants appeared, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issues(s) to be Decided

Are the Tenants entitled to dispute an additional rent increase under section 43 of the *Residential Tenancy Act*?

Are the Tenants entitled to an Order to have the Landlord a) make emergency repairs, and b) to make repairs to the unit, site or property under sections 32 and 33 of the *Residential Tenancy Act*?

### Background and Evidence

The month to month tenancy agreement began on August 1, 2006. The current monthly rent is \$1,270.00 and the Tenants paid a security deposit of \$575.00 on June 20, 2006.

The male Tenant testified that he did not serve the Landlord with copies of his photographic evidence.

The Agent testified he served the Tenants in person with copies of the Landlord's evidence on March 11, 2010. The male Tenant confirmed receipt of the Landlord's evidence.

The Tenant confirmed his rent was \$1,240.00 and he received three months written notification of a rent increase effective August 1, 2009 to \$1,270.00. The male Tenant argued that he should not have to pay the additional rent when he has had to endure a window leak since 2008.

The male Tenant stated that he first noticed his window leaking in November 2008 and that he informed the Agent of the problem at that time.

The Agent confirmed that there has been an issue with water leaking into the rental unit and that this problem occurs when they have periods of excessive rain or rain for several days in a row. The Agent argued that a window repair company attended the building and applied caulking to the building in attempts to solve the problem. The problem did not present itself again until the fall of 2009 when the fall/winter rains began.

The Landlord argued that they initially worked with the window company and they now realize the problem is more severe and most likely a building envelope problem. The Landlord referred to her evidence in support of her testimony that they have hired an engineering firm to inspect the building and the Landlord is awaiting the engineering report to determine how to repair the problem. The Landlord confirmed that they initially offered the Tenants a \$300.00 credit on their November 2009 rent to accommodate the devaluation of their tenancy and the Tenants have continued to short pay their rent by \$300.00 each month since. The Landlord has offered the Tenants the reduced rent of \$940.00 per month, until the water leak has been repaired. The Landlord has also offered the Tenants the opportunity to relocate to another unit, at full rent; if one becomes available that meets the Tenants' approval.

The Landlord testified the Tenants have refused to pay the rent increase amount from the onset of August 1, 2009 and that they have always paid the previous amount of

\$1,240.00, short paying by \$30.00 per month. The Landlord confirmed that given the circumstances, the Landlord has never pursued the issue of short payment of rent.

The male Tenant stated that he did not proceed with his claim in 2008 and 2009 as he was concerned the Landlord would not do a proper repair job. The male Tenant stated that he was still concerned the Landlord will not do a proper repair job once they have the engineering report.

### Analysis

The Tenants confirmed that they did not provide the Landlord with copies of their evidence, in contravention of section 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore, as the respondent Landlord has not received copies of the Tenants' evidence, I find that the Tenants' evidence cannot be considered in my decision. I did however consider the Tenants' testimony.

All of the testimony and the Landlord's documentary evidence were carefully considered.

The legislated allowable rent increase amount for 2009 is 3.7% in accordance with section 22 of the *Residential Tenancy Regulation*. Based on the evidence before me I find the Landlord issued notice of a rent increase in accordance with Act and Regulation for an increase amount that is less than 2.45%.

Section 43(2) of the Act provides that a Tenant may not make an application for dispute resolution to dispute a rent increase that complies with this part. Based on the aforementioned I dismiss the Tenants' request to dispute a rent increase.

The evidence supports the Landlords are taking the water leak seriously and they are working towards resolving the issue. The Landlords have offered the Tenants a reduction in monthly rent to \$940.00 (a reduction of \$330.00 = \$1,270 rent owing less

\$940.00 rent being paid) until the problem has been repaired or until the Tenants have moved to a different unit. The Landlord has offered to continue to inform the Tenants when a unit becomes available in any of their buildings, for the Tenants to review and consider renting at full rent. The Landlord has also offered to assist the Tenants with some of the moving costs if they chose to relocate to another unit.

### Conclusion

**I HEREBY ORDER** the Landlord to proceed with their current course of action, awaiting the engineering report and following through with the engineers recommended repairs, in accordance with section 32 of the Act.

**I HEREBY ORDER** the Tenants to continue paying a reduced rent of \$940.00 per month until they are advised by the Landlord the repairs are completed, at which time the rent will return to \$1,270.00 per month. If the Tenants choose to move into a different rental unit offered by the Landlord they are required to enter into a new written tenancy agreement and pay the agreed upon monthly rent applicable to the new unit.

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 22, 2010.

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Dispute Resolution Officer