

## **DECISION**

Dispute Codes      ERP, RP, PSF, MNDC, RR, FF

### Introduction

This matter dealt with an application by the Tenants for an Order requiring the Landlords to make emergency and general repairs, to provide services and facilities required by law, for compensation for the Landlord's alleged failure to make repairs as agreed, for a rent reduction until such time as repairs are completed and to recover the filing fee for this proceeding.

### Issues(s) to be Decided

1. Are emergency or general repairs necessary?
2. Are the Tenants entitled to compensation for the Landlord's alleged failure to make repairs and if so, how much?
3. Are the Tenants entitled to a rent reduction?

### Background and Evidence

This fixed term tenancy started on March 1, 2009, expired on February 28, 2010 and continued on a month to month basis thereafter. Rent is \$1,000.00 per month plus 1/3 of the utilities for the rental property.

The Tenants said they applied for emergency repairs because their toilet did not flush properly and that the dryer did not work. The Tenants claimed that the Landlord has recently repaired those items but took a month to do so.

The Tenants claim that a few days after they moved in, they gave the Landlord a written list of repairs that needed to be made to the rental unit. The Tenants said they entered into the tenancy agreement on the assurance of the Landlord that these repairs would be made in a timely manner. The Tenants claimed that the Landlord did not make any of the repairs and have left it to the Tenants to do them. The Tenants said they replaced a lock (at the Landlord's expense), repaired damages to a living room and dining room wall and fixed some plumbing that had red tape on it. The Tenants also said that the rest of the items on the list of repairs have not been repaired and as a result, the Tenants sought compensation of \$200.00 per month for every month they have occupied the rental unit. The Tenants also asked for an order reducing their rent by \$200.00 per month until these repairs have been completed.

In addition to the items on the list of repairs, the Tenants said their dishwasher leaks, a door to the furnace room/garage has a ¾ inch gap under it which lets in cold air, white dust is coming out of the air vents and some debris intermittently comes out of the bathroom tap. The Tenants also claimed that under the tenancy agreement storage was included in the rent. The Tenants said that at the beginning of the tenancy the

Landlord agreed to provide additional storage in the kitchen but has not done so. The Tenants further claimed that the Landlords control the level of heat in the rental property and that there is inadequate heat in the rental unit at night.

The Landlord claimed that the repairs to the toilet and dryer were made approximately a week after the Tenants advised them. The Landlord denied that he agreed to make repairs to the rental unit at the beginning of the tenancy and claimed instead that a list of condition issues was signed by both parties so that the Tenants would not be held responsible for them at the end of the tenancy. The Landlord argued that the Tenants agreed to take the rental unit in "as is" condition and never raised the issue of an agreement to make repairs until they were served with a One Month Notice to End Tenancy for Cause in February.

The Landlord claimed that storage was not included in the Parties written tenancy agreement. The Landlord denied that there was a verbal agreement to provide the Tenants with additional storage in the kitchen. The Landlord said the Tenants were given room in the yard for 2 or 3 bicycles and that they currently have 3 chained to the balcony pillar.

The Landlord denied that there was inadequate heat in the rental unit and said that the Tenants instead often call the Landlord to turn the heat down. The Landlord said the Tenants have not advised him that the dishwasher is leaking although they have complained about dust in the vents which they could vacuum out. The Landlord also said that the door with the  $\frac{3}{4}$  inch gap is necessary to allow air to flow into the furnace.

### Analysis

I find that there are no emergency repairs required as defined by s. 33 of the Act and that part of the Tenants' application is dismissed. In particular, I find that there is insufficient evidence **at this time** that the temperature in the rental unit at night makes it unfit for occupation.

The Tenants argued that at the beginning of the tenancy the Landlord agreed to make the repairs that were set out on a list (in a timely manner). The Landlord argued that the list was only supposed to document damages that existed at the beginning of the tenancy so that the Tenants would not be held responsible for them at the end of the tenancy. The Tenants claimed that the Landlords were supposed to make the repairs in a timely manner but later refused to do so and left it up to the Tenants to make some of them. The Landlords argued that it did not stand to reason that the Tenants would wait for almost a year to have repairs made if there was an agreement that the repairs were supposed to be done in a "timely manner."

In this matter, the Tenants have the burden of proof and must show (on a balance of probabilities) that there was an agreement that the Landlord would make the repairs set out on the list. This means that if the Tenants' evidence is contradicted by the Landlord,

the Tenants will need to provide additional, corroborating evidence to satisfy the burden of proof. Given the contradictory evidence of the Landlord and in the absence of any corroborating evidence, I find that the Tenants have not provided sufficient evidence to show that there was an agreement that the Landlord would repair **all** of the items set out on the list.

Instead, I find that only the first 4 items on the list referred to by the Parties could reasonably be construed as requiring the Landlord to make repairs:

- change deadbolt lock (has no key);
- glass and old furniture must be removed from area we are to use for parking motorcycle;
- graffiti on kitchen counter must be filled and painted;
- fix both bedroom doors.

The Tenants claimed that they replaced the lock at the Landlord's expense and filled the area on the kitchen counter but that the other items have not been dealt with by the Landlord. The Landlord claimed that the Tenants were provided with a small space by a balcony pillar in the back yard to lock up 2 bicycles, however, I find that this would be inadequate to park a motorcycle and does not comply with the agreement set out above. Consequently, **I order the Landlord pursuant to s. 62(3) of the Act to provide the Tenants with a space in the back yard to park a motorcycle, to paint the kitchen counter and to fix both bedroom doors.** I find that there is insufficient evidence of an agreement to repair the other items set out on the list and accordingly I make no repair order with respect to them.

Section 7(2) of the Act states that a Party who suffers damages must take reasonable steps to minimize their damages. I find it unreasonable that the Tenants took over a year to bring their application for compensation for the Landlord failing to make repairs and as a result, I dismiss their application for that compensation. However, **I order that if the repairs set out above are not completed by May 31, 2010, the Tenants will be entitled to deduct \$100.00 from their rent starting June 1, 2010 and continuing for each month until the repairs are fully completed. I order the Tenants not to unreasonably interfere with the Landlord's attempts to make the repairs.**

Section 32 of the Act says that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and that make it suitable for occupation by a tenant. The Tenants provided no evidence that the other damages on the list did not comply with health, safety and housing standards or otherwise rendered the rental unit unsuitable for occupation. As a result, I find that there are no grounds for granting the Tenants' application to repair the other damages set out on the list or for a rent rebate until such repairs would be made and that part of their application is dismissed.

I find that there is insufficient evidence of a verbal agreement that the Landlord agreed to provide the Tenants with additional storage in the kitchen and as a result, that part of their application is dismissed.

I find that the Tenants have not advised the Landlord that the dishwasher was leaking. However, given the potential damage such a water leak could have to the flooring in the immediate area, **I order the Landlords to investigate that issue and if necessary, to repair any water leak in the dishwasher.** Given that a Landlord has a duty to maintain a residential property, **I also order the Landlords to take steps to remove the excess dust and debris from the vents in the rental unit and to investigate the Tenants' complaints that there is debris coming from the taps in the bathroom and make any necessary repairs.**

Given the evidence of the Landlord that a gap under the door of the furnace room is necessary, I find that it is not unreasonable and accordingly make no order to repair it. As the Tenants have only been moderately successful on their application, I find that it would not be appropriate to order the return of their filing fee and that part of their application is also dismissed without leave to reapply.

### Conclusion

The Tenants' application for a repair order is granted in part on the above-noted terms. 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 20, 2010.

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Dispute Resolution Officer