

## **DECISION**

Dispute Codes      RP, RR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for an Order for the landlord to make repairs to the unit and to allow the tenants to reduce their rent for repairs, services or facilities agreed upon but not provided. The tenants also seek a Monetary Order to recover the filing fee.

The tenants served the landlord by registered mail on March 18, 2010 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witness, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Are the tenants entitled to an Order for the landlord to make repairs?
- Are the tenants entitled to reduce their rent for repairs not made?

### Background and Evidence

This month to month tenancy started on October 30, 2009 and ended on March 30, 2010. The tenants paid a monthly rent of \$950.00 which was due on the first of each month. The tenants paid a security deposit of \$475.00 which has been returned by the landlords at the end of the tenancy.

The tenants testify that since the day they moved into the unit the toilet ran nonstop. The tenants claim they had to lift the cistern lid and put their hand in to flush the toilet. The tenants claim this was embarrassing when they had family or guests visiting if they wanted to use the toilet.

The tenant's testify that the fan in the bathroom did not work correctly. It was very loud and could be heard all over the unit. The tenants claim that they told the landlords of these problems when they first moved into the unit and then told them again every time they came to collect the rent. The tenants claim that one of the landlords is a plumber and when he came to collect the rent in December they notified him again about the toilet, the noise from the fan and a leak under the sink. The tenants claim the landlord fixed the leak under the sink but did not seem bothered about the running toilet. The tenants state that on March 16, 2010 they sent the landlords a letter outlining the problems and requesting that the landlords fix the toilet and fan.

The tenants no longer seek an Order for the landlord to make repairs as they have moved from the rental unit. The tenants seek a rent reduction of either 20% or 30% of their rent for each month they lived in the property.

The landlords testify that the tenants did not notify them that there was a problem with the toilet running until December 2009. At this time the male landlord agrees that the tenants told him about the leak under the sink which he repaired. He claims this was the first time the tenants mentioned about the toilet running however the landlord states this comment was made in passing and he could not hear the toilet running at that time. The landlords claim the tenants did not mention the toilet to them again until they received a letter from them on March 17, 2010. The landlords claim they responded to this letter and notified the tenants that they would fix the toilet within two weeks. However, the tenants had arranged to move out of the unit by this time. When the landlord went to make the repairs after the tenants had vacated they could find no problems with the toilet and their new tenants have not experienced any problems with water running into the toilet. The landlords claim the house is on a water meter and if the toilet was running

continually for five months as the tenants allege then they would have noticed an increase in their water bills. The landlords claim that there has not been an increase in their bills. The landlords argue that they could not repair something that was not broken and if it was not working correctly then the tenants should have notified then in writing at the start of their tenancy so repairs could have been made then.

The tenant called her brother as a witness. He testifies that the water was running all the time and also confirms that the tenant told the landlord in December, 2009 around Christmas time about the fan and the toilet. The witness states the landlord said he would fix the fan. The witness states he had to pull the plunger in the cistern to flush the toilet each time it was used. The landlord questioned the witness and asked why he had to take the top off the cistern to flush it, if it was running all the time. The witness replies that water was running into the toilet bowl.

The landlord disputes the tenants and her witness' testimony and argues if the toilet was running continually then that would continually flush the toilet so why did the tenants or their guests have to lift the cistern lid to flush the toilet.

### Analysis

In this matter the tenants have the burden of proof and must show that the landlords were negligent in not affecting repairs to the toilet or fan. When a tenant's evidence is contradicted by the landlord, the tenant will need to provide additional corroborating evidence to satisfy the burden of proof. In this instance I find the tenants have not provided sufficient evidence that they notified the landlord of the alleged problems with the toilet and the bathroom fan prior to their letter dated March 16, 2010 or any corroborating evidence that these problems existed to the extent the tenants claim or that the landlords did not comply with section 32 of the *Act*.

Consequently I find the tenant's application for a rent reduction for the five months they lived in the property to have no merit and their claim is dismissed without leave to reapply.

As the tenants have moved from the rental unit they have withdrawn their application for the landlord to make repairs. As the tenants have been unsuccessful with their claim I find they must bear the cost of filing their own application.

### Conclusion

The Tenant's application is dismissed in its entirety 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: May 03, 2010.

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Dispute Resolution Officer