

## **Decision**

**Dispute Codes:** RP, RR, MNDC, FF

### **Introduction**

This hearing dealt with two applications: i) by the tenant for an order instructing the landlords to make repairs to the unit, permission to reduce rent for repairs, services or facilities agreed upon but not provided, and recovery of the filing fee; ii) by the landlords for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement, and recovery of the filing fee.

Both parties participated in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether either party is entitled to any of the above under the Act, regulation or tenancy agreement

### **Background and Evidence**

Pursuant to a written tenancy agreement, the month-to-month tenancy began on July 1, 2006. Currently, rent in the amount of \$670.00 is payable in advance on the first day of each month. A security deposit of \$325.00 was collected on June 4, 2006.

The principal issues in dispute include, but are not limited to, the landlords' wish to be reimbursed for repair of a broken window, and the tenant's wish to have the landlords attend to a number of alleged deficiencies in the unit including repair or replacement of his stove. During the hearing the parties respectfully exchanged views on some of the circumstances surrounding the dispute and undertook to achieve a resolution.

### **Analysis**

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca/](http://www.rto.gov.bc.ca/)

The attention of both parties is drawn to section 32 of the Act which speaks to **Landlord and tenant obligations to repair and maintain**, and provides as follows:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1)(a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Residential Tenancy Policy Guideline # 5 addresses "Duty to Minimize Loss," and provides in part as follows:

Where the landlord or tenant breaches a term of the tenancy agreement or the [Act], the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the

law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being damaged by water due to an improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid further damage. If further damages are likely to occur, or the tenant has lost the use of the plumbing fixture, the tenant should notify the landlord immediately. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs under the [Act]. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

The [Act] requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation.

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a resolution. Specifically, it was agreed as follows:

- that the landlords will replace the tenant's stove by no later than midnight, Saturday, May 29, 2010;
- that the aforementioned stove is understood to be used, but clean and fully functioning;
- that the tenant will reimburse the landlords in the amount of \$93.72, which is half the cost incurred by the landlords for repair of the broken window in the tenant's unit ( $\$187.43 \div 2$ );

Consistent with the timeframe for replacement of the tenant's stove, I hereby order the tenant to reimburse the landlords in the amount of \$93.72 by no later than midnight, Saturday, May 29, 2010.

As the parties successfully negotiated a settlement to their dispute, I hereby dismiss their respective applications to recover the filing fee.

### **Conclusion**

I hereby order the parties to comply with the terms of the agreement reached between them, and with the order otherwise set out above.

DATE: May 10, 2010

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Dispute Resolution Officer