

## **DECISION**

Dispute Codes      RP, FF

### Introduction

This matter dealt with an application by the Tenant for an order that the Landlord make repairs and to recover the filing fee for this proceeding.

### Issues(s) to be Decided

1. Are repairs required?

### Background and Evidence

This month-to-month tenancy started on July 24, 2009. The Tenant said that at the beginning of the tenancy he did a move in inspection with an agent for the Landlord and made a list of repairs that needed to be done. The Tenant said he agreed to make some of the repairs and the Landlord was to make others. The Tenant also said that the repairs that were to be done by the Landlord were not done by September 2009 so he contacted the Landlord and discussed the repairs with one of its agents and left a list with another agent. The Tenant claims that while the Landlord has since done some of those repairs, it has not fixed a garage door, a toilet and moulding in a bathroom.

The Tenant said that after the tenancy started the Landlord told him that parts were not available to repair the garage door and it would be too expensive to replace. The Tenant claimed, however, that he located the parts necessary to repair the garage door (ie. a wire and pulley spring system). The Tenant also claimed that the Landlord is reluctant to replace the garage door because it intends to develop the rental property and eventually demolish the house.

The Tenant said he was advised by a plumber that the toilet in the rental unit was old and worn out. In particular, the Tenant claimed the flushing mechanism was not powerful enough to flush properly. The Tenant admitted that the Landlord has had a plumber in on a couple of occasions to repair the toilet but he claimed that it still does not work properly.

The Tenant said that when the property was renovated prior to the start of the tenancy, a piece of moulding was not replaced in the bathroom. The Tenant also said that a handyman for Landlord later put a silicon barrier in that area to prevent moisture from getting into the flooring however, it is visually unappealing.

The Landlord claimed that he told the Tenant at the beginning of the tenancy that the Landlord could not repair the garage door and would not replace it. The Landlord said the Tenant may not have been clear about this because he brought it up again during a meeting with another agent for the Landlord in September 2009. The Landlord also

said that he has been told by a local business that parts to repair the garage door are not available. The Landlord thought his handyman had contacted the supplier identified by the Tenant but he was not certain. The Landlord said he has not investigated the cost to replace the garage door.

The Landlord said that his handyman attempted to fix the toilet by installing a valve but only made matters worse. The Landlord said that a plumber then did some maintenance on the toilet and he believed that the problem had been solved. The Landlord argued that the Tenant did not say anything about the toilet not working until the hearing. The Landlord also said that he will need to speak to the plumber to find out what the recommended course of action is.

The Landlord said he believed that all of the moulding was installed during the renovations however he agreed to have the missing piece in the bathroom replaced.

### Analysis

Section 32(1) of the Act says that a Landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law, and that make it suitable for occupation by a tenant. Sections 32(3) and (4) of the Act say that a tenant is responsible for repairing damages caused by his actions or neglect but is not responsible for reasonable wear and tear.

RTB Policy Guideline #1 (Responsibility for Residential Premises) says at p. 1 that “a tenant cannot be required as a condition of tenancy to paint the premises or to maintain and repair appliances provided by the Landlord. Such a term of the tenancy agreement would not be enforceable. However, the landlord and tenant may enter into a separate agreement authorizing the tenant to provide services for compensation or as rent.”

The Landlord argued that the Tenant was aware at the beginning of the tenancy that the garage door did not work and also argued that the Tenant uses that area for storing items other than his vehicle and has access to it through a side door. The Tenant argued that he does use the garage for parking his vehicle and that it was only after the tenancy started that the Landlord claimed it would be too expensive to replace the garage door.

I find that there is insufficient evidence that the Tenant agreed at the beginning of the tenancy that the Landlord would *not* be responsible for repairing the garage door. I also find that the use of the garage is included in the Tenant's rent and that he is entitled to use it for the primary purpose for which it is intended which is to store a vehicle. Consequently, I find that the Landlord is responsible for repairing or replacing the garage door.

Even if the Tenant did agree to enter the tenancy agreement knowing that the garage door did not work properly, s. 32(5) of the Act says that a landlord's obligations under s.

32 of the Act apply whether or not a tenant knew of a breach by the landlord at the time of entering into the tenancy agreement. In other words, the Act imposes an obligation on a landlord to repair and maintain property and the parties cannot contract out of that obligation. As a result, ***I order the Landlord to repair the garage door and if it cannot be repaired then to replace it no later than August 31, 2010.*** If the Landlord has not repaired or replaced the door by that date, the Tenant may deduct \$100.00 from his rent commencing September 1, 2010 and for each month and part month thereafter that this repair remains outstanding.

I find that the Landlord is currently trying to resolve the ongoing problems with the toilet in the rental unit and as a result, I find that it is unnecessary to make an order regarding it. However, if the repairs to the toilet are unsuccessful, the Tenant may reapply for an Order requiring the Landlord replace the toilet and should he do so, it is strongly recommended that the Parties provide evidence from a qualified tradesperson as to the nature of the problem and whether this is a recommended course of action in the circumstances.

As the Landlord agreed to replace the missing piece of moulding in the bathroom, I also find it unnecessary to make a repair order for that. I find pursuant to s. 72 of the Act that the Tenant is entitled to recover the \$50.00 filing fee he paid for this proceeding from Landlord and I order that he may deduct that amount from his next rent payment when it is due and payable.

### Conclusion

The Tenant's application is granted on the terms highlighted above. 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: June 22, 2010.

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Dispute Resolution Officer