

## **Decision**

**Dispute Codes:** ERP, RP, LRE, MNSD, FF

### **Introduction**

This hearing dealt with an application by the tenants for an order instructing the landlords to make emergency repairs for health or safety reasons; an order instructing the landlord to make repairs to the unit, site or property; an order suspending or setting conditions on the landlord's right to enter the rental unit, return of the security deposit; and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether the tenants are entitled to any or all of the above under the Act, regulation or tenancy agreement

### **Background and Evidence**

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the month-to-month tenancy began on August 1, 2010. The unit is a developed basement of the house in which the landlords reside upstairs. Monthly rent is \$785.00, and a security deposit of \$392.50 was collected at the outset of tenancy. A move-in condition inspection report was not completed by the parties.

The tenant claims there were two particular occasions when the landlord entered the unit without proper notice. However, the landlord argues that in each case, the tenant gave verbal consent to authorize the entry.

In her application the tenant claimed that a smoke alarm in the unit was not working, however, subsequent to the filing of the application the landlord remedied that problem.

The tenant claims that a large covered hole in the floor at the main entrance to the unit permits cold air into the unit. Further, she claims that the "cover is not fixed so if it

slides somebody might fall down.” The landlord claims that the steel plate cover is sufficiently heavy to resist sliding and, further, that a carpet covering the steel plate assists in holding the plate in place and preventing the entry of cold air.

The tenant claims that heat in the unit is insufficient. The landlord states that the house is heated by forced air heating, that the thermostat is programmed to begin heating the house at 5:00 a.m., and that the landlords turn the heat down at approximately 10:00 p.m. in the evenings. Further, the landlord has provided plug-in electric heaters for the tenants’ use.

The tenant also states that the fan over the stove is insufficient to remove cooking odors which upset the landlords. Additionally, the tenants are reluctant to open the windows to help vent the cooking odors since this will permit access to the unit by cold air. The landlord states that the stove fan vents odors to the outside of the house but that some odors still rise up through the heating vents to the landlords’ quarters. The landlords take the position that by opening the windows “a crack” during the cooking, no significant loss of heat would occur and fewer cooking odors would find their way upstairs.

The tenant claims that there is insufficient hot water available for laundry, and the testimony of the parties in this regard is contradictory.

The tenant complains that there are bare electrical wires feeding into a light fixture near the unit entrance, as well as a “loose” lightswitch on the washroom wall, a burned looking plug-in on one of the electric heaters, burn marks around a plug-in outlet in the kitchen hallway, and a light improperly installed above the stove with the aid of duct tape. Evidence submitted by the tenants in this regard includes photographs.

While the tenant has specified the sum of \$2,000.00 in her application, her application does not identify the specific nature or reason for such compensation.

### **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/)

During the hearing the parties confirmed that the tenancy is still current, and that neither party has given notice to end the tenancy. The disposition of the security deposit is to be resolved between the parties at the conclusion of the tenancy. Accordingly, in the meantime, the aspect of the tenants' application concerning return of the security deposit is hereby dismissed.

As for the aspect of the dispute concerning management of cooking odors, the parties are encouraged to exercise courtesy and understanding in their dealings with each other.

Where it concerns the provision of heat to the unit, I find there is insufficient evidence that the unit is not properly heated, or that the tenants do not have adequate electric heaters available for their personal use.

As to the allegation that the supply of hot water for laundry is insufficient, in the absence of a copy of the written residential tenancy agreement, and in the face of contradictory testimony from the parties, I make no finding, and the parties are encouraged to undertake every effort to resolve this matter between them. In the event of their inability to resolve this aspect of the dispute, the tenant has the option of applying for dispute resolution, seeking a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement; or for an order instructing the landlord to reduce rent for repairs, services or facilities agreed upon but not provided; or for an order instructing the landlord to comply with the Act, regulation or tenancy agreement. In the event of such an application, the dispute resolution officer would make a finding based on the documentary evidence and testimony of the parties.

Testimony by the parties concerning the landlord's access to the unit is contradictory. In short, I find there is insufficient evidence that the landlords have breached the Act. However, for the information of both parties, attention is drawn to section 29 of the Act

which addresses **Landlord's right to enter rental unit restricted**, and provides as follows:

29(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1)(b).

Pertinent to the tenants' concern about the covered hole on the floor near the entrance of the unit, section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**, and provides in part:

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.

(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.

In summary, I find there is insufficient evidence that the covered hole does not comply with health, safety or housing standards required by law, or that it makes the unit unsuitable for occupation by the tenants.

In relation to electrical deficiencies identified by the tenant, section 33 of the Act addresses **Emergency repairs**, and provides in part:

33(1) In this section, "**emergency repairs**" means repairs that are

- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
- (v) the electrical systems,...

Based on the documentary evidence and testimony of the parties, I find that there appear to be certain electrical deficiencies in the unit. **Accordingly, I hereby order the landlord to engage the services of a qualified electrician by no later than midnight, Friday, December 31, 2010 to inspect and/or repair and/or replace the following:**

- 1) the bare electrical wires feeding into a light fixture near the unit entrance
- 2) the “loose” lightswitch on the washroom wall
- 3) a burned looking plug-in on one of the electric heaters
- 4) burn marks around a plug-in outlet in the kitchen hallway
- 5) a light improperly installed light above the stove

As the tenants have achieved some success with this application, I hereby order that they may recover the filing fee by way of withholding **\$50.00** from the next regular payment of monthly rent.

### **Conclusion**

Pursuant to all of the above, I hereby order the landlords to comply with the specific order(s) set out above by no later **midnight, Friday, December 31, 2010.**

I hereby order that the tenants may withhold **\$50.00** from the next regular payment of monthly rent in order to recover the filing fee.

**DATE: December 6, 2010**

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Dispute Resolution Officer