Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNC, OLC, RP, FF

Introduction

This hearing was held in response to the tenant's Application to cancel a 1 Month Notice ending tenancy for cause, an Order that the landlord comply with the Act and make repairs and to recover the filing fee cost for the Application from the landlord.

Both parties were present at hearing, held over 4 dates. At the start of each hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

All evidence confirmed at the initial hearing was considered i**n** reaching this decision.

Preliminary Matters

At the start of the hearing it was agreed that the landlord's legal counsel would be removed from the tenant's Application, as the law firm had been named as a respondent.

Issue(s) to be Decided

Should the Notice ending the tenancy for cause, issued on July 21, 2010, be cancelled?

Must the landlord be Ordered to comply with the Act?

Must the landlord make repairs to the rental unit or property?

Are the tenants entitled to filing fee costs?

Background and Evidence

The tenancy commenced on July 10, 2007. The tenancy agreement submitted as evidence indicated rent of $1,800.00 per month, due on the first day of each month. The landlord submitted a copy of a page marked as "#17, additional terms," which stated:

1. *Pool and garden to be maintained on a regular basis, and to the standard by which the property was rented. Failure to do so will result in an additional $250.00 per month to pay for pool and garden maintenance.*
2. *Webber BBQ to be included in appliances included with the house.*

This document was not signed or dated by either party.

During the hearing the landlord and the tenants agreed that a 1 Month Notice to End Tenancy for Cause was served on the tenants indicating that the tenants were required to vacate the rental unit on August 31, 2010.

The reasons the Notice to End Tenancy was issued were based upon the tenants having:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Put the landlord's property at significant risk;
- Caused extraordinary damage to the unit;
- Not completed required repairs to the damage caused to the unit; and
- Breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Landlord's Submission

The landlord reviewed her documents submitted as evidence, consisting of 10 tabbed sections of documents and photographs.

The landlord purchased the home in 1994 and in 1998, renovations were completed that included removal of ramps that had been installed in the home, new hardwood flooring, new carpets and a new kitchen. The home has a basement suite which is also rented.

A copy of a move-in condition inspection report completed and signed on July 1, 2007, by the tenants and the landlord's daughter, who had been acting as agent, was supplied as evidence. This report recorded some damages such as a stove element cover; a

dent on the refrigerator door; 2 small stains on living room carpet; broken and cracked tile in the main bathroom floor, sink and shower and marks on the basement wall.

The landlord's daughter acted as agent until January 14, 2009, at which time the landlord assumed responsibility for the rental unit and tenancy. Copies of notes which recorded contact made with the tenants by the agent, between July 13, 2007 and December 20, 2007, was supplied as evidence. The notes contained evidence of the landlord's response to planed or required repairs or items requested by the tenants.

On June 15, 2010, the landlord wrote the tenants a letter outlining a number of concerns that she had as the result of an inspection of the property completed by the landlord on June 11, 2010. This letter, sent via the landlord's legal counsel, required the tenants to:

- Clean all of the bathroom tile, glass block, bathroom threshold and grout of mould and dirt;
- To replace the toilet seat which was missing;
- Clean and/or repair the hardwood flooring from the threshold in the hallway to the bathroom, which appears blackened from water damage;
- Clean and remove stains from bedroom, stairway and basement bedroom carpeting and replace if cleaning does not restore the carpet;
- Clean hardwood flooring in entrance, kitchen and inside the sliding door that leads to the backyard;
- Clean the kitchen and bathroom cabinets;
- Remove all dead plants in the garden and replace those plants;
- Clean the pool and bring the chlorine levels up to the required standard;
- Provide the landlord with a cheque in the sum of $250.00 for the month of June 2010 and post-dated cheques, as per term #17 of the tenancy agreement;
- Remove spikes from the garden gate and replace with proper hardware; and
- General comments regarding complaints made by the basement tenants and that investigation of these reports will take place to establish their validity.

The letter informed the tenants that they had failed to maintain the property, failed to maintain reasonable health, cleanliness and sanitary standards, caused substantial damage to the interior and allowed the exterior to fall into disrepair. The tenants were directed to bring the unit back to the condition in which it was rented by July 15, 2010; at which point a further inspection would be arranged.

The landlord provided copies of photographs taken during the June 11, 2010, inspection which show darkened bathroom grout; tiles broken from around a pedestal toilet; a missing toilet seat lid; a broken gate, the pool; kitchen cabinets, garden, flooring and carpets. The landlord submitted that mold is growing in the bathroom tile grout and appears to be present in the grout between the hardwood floors. The carpets have been allowed to become extremely dirty and areas of flooring are damaged and dirty.

On July 11, 2010, the tenants issued a letter to the landlord in which the tenants acknowledged and responded to the landlord's concerns. The landlord found this response inadequate and felt it indicated the tenants did not intend to bring the home up to the standard the landlord expected.

On July 21, 2010, the landlord issued a 1 Month Notice ending tenancy for cause. The landlord submitted that the list of repairs and cleaning given to the tenants combined with the photographic evidence gathered on June 11, 2010, support reasons given on the notice ending tenancy. The landlord did not return to the unit to complete a further inspection as she had determined that the tenant's written response to her concerns was insufficient.

When asked by the tenants if the landlord felt the damage to the unit was intentionally caused the landlord replied that she did not know, but that she felt her property was being ruined.

The occupants downstairs had informed the landlord of a flood that originated from the upper unit in February, 2010. The landlord had not been overly concerned about the February flood, as she believed it was a one-time occurrence.

On June 10, 2010, at 11:30 p.m., a second, more serious flood occurred. Water that smelled like sewage overflowed from the tenant's bathroom into the lower unit. It took the downstairs occupants hours to clean the water up, which resulted in a loss of belongings. When the occupants approached the tenants that night, the male tenant swore and told them they were cleaning up the water.

The landlord received a June 10 email from the occupants of the lower unit reporting the flood. The landlord called the tenants the next day and they informed her that the toilet overflowed. On June 11, 2010, the landlord completed the inspection of the home which resulted in the Notice ending tenancy being issued on July 21, 2010.

The landlord's witnesses, D.M and K.P. have lived in the basement since August 2009. These occupants first had problems with the tenants when they requested access to the upper unit so that Telus could install wiring; the tenants refused and were rude to the technician.

D.M stated that the tenants have tampered with their mail as there is only one mail box and the tenants have refused to sort out the lower occupant's mail. The occupants downstairs have found their mail on the porch and ground and at one point mail went missing. The occupants were forced to obtain a postal box as a result of this tampering. Upon questioning by the tenant, the male occupant confirmed that he has had a postal box for approximately 1 year; the female occupant testified they obtained the postal box just prior to moving into the unit.

D.M. testified that when the tenants leave their home the dogs howl; that the tenant's tread heavily on the floor and at one point stomped so hard that a leaded glass window

fell from a ledge in the occupant's bedroom. The occupants reported other issues such as grass clippings left on their walk-way, garbage payment tags being taken, dirty windows in the upper unit and by-law enforcement parking issues as a result of the tenants behaviour.

D.M. stated that he has complained to the landlord, but that for the most part he has not reported incidents of disturbance. Upon questioning by the writer D.M. stated that he has had 6 to twelve contacts with the landlord in relation to problems with the tenant, but he could not provide any dates of those contacts.

K.P. testified for the landlord and reported having problems with the tenants since she arrived in February 2009. In February 2010, the tenants caused a water leak that entered the lower unit; the tenants were approached and they accused the lower occupants of having mental health issues.

The June 15, 2010, letter sent to the tenants by the landlord's legal counsel stated that the landlord had been contacted by the downstairs occupants "with complaints regarding activities in your premises that unduly interfere with their enjoyment of their property. After we have had an opportunity to canvass their concerns, we will seek further instructions from our client regarding action, if any that will be required to allay any valid concerns."

The landlord found the tenant's testimony contradictory, and submitted that the photographs of the unit support the reasons on the Notice. The landlord stated that the version of events supplied by the occupants and the landlord are more credible than those supplied by the tenants. Damage to the structure occurred as a result of the 2 floods; the tenants denied any awareness of the first flood and the presence of mold is undeniable. The tenant's letter of July 11, 2010, did not fully respond to the requirements set out by the landlord and indicated that the tenants had no intention of making the repairs.

On July 29, 2010, the tenants paid August rent, less $100.79 for plumber costs and a new toilet seat.

The landlord acknowledged responsibility for the garden gate which requires repair. The landlord submitted that the tenants damaged the gate by using large nails in an attempt to fix the gate.

The landlord has not returned to the rental unit since June 11, 2010.

Tenant's Submission

On July 11, 2010, the tenants responded to the landlord's letter of June 15, 2010, a copy of which was supplied as evidence. In that letter the tenants raised a number of issues as follows:

- Problems with the toilet since the start of the tenancy;
- That a toilet seat will be purchased and the cost deducted from rent as the seat hinges were corroded;
- The carpets will be steam cleaned;
- The floors by the sliding doors are in move-in condition;
- The carpet on the stairs and in the basement will be steam cleaned;
- The ivy has been removed in the past but was not the tenant's responsibility;
- The stove knobs will be ordered but are old and may be difficult to locate;
- The tile grout will be taken care of;
- The landlord was notified one year ago in relation to the required fence repairs that are not the tenant's responsibility;
- The bush that died is not the tenant's responsibility but they paid to have it removed;
- Pool maintenance has been a challenge and the tenants are currently dealing with the maintenance trades; and
- That the problems with the basement tenants are the landlord's responsibility.

The tenant's submitted a copy of an email sent by the landlord's legal counsel on July 19, 2010, in which the landlord declined to inspect the rental unit, as the result of the tenant's July 11, 2010, letter which the landlord determined confirmed that the tenants had not completed the requested repairs. This email also indicated that the landlord assumed the tenant's would not be providing additional monthly rent payments in the sum of $250.00 for pool and garden maintenance they no longer wished to carry out.

The tenants provided a copy of a Sears Carpet Cleaning invoice in the sum of $190.39 booked on July 10, 2010, and completed on July 12, 2010, for an oversized room at the rental unit address. The tenants testified that all of the carpets had been steam cleaned.

The tenants supplied a copy of a cheque issued in the sum of $225.00 dated April 2010, for swimming pool maintenance for April, May and June; a June 21, 2010, plumbing invoice in the sum of $84.00 for toilet snaking and float adjustment; a cheque issued in the sum of $155.00 dated June 29, 2010, for kitchen and bathroom cleaning services and a June 24, 2010, receipt for pool chlorine purchase in the sum of $18.93.

The plumbing invoice indicated "W.C. at least 30 years old no parts available." The tenants had informed the landlord's daughter, early in the tenancy, that the toilet was a problem. On August 3, 2010, the tenants sent the landlord's lawyer a facsimile to report that the toilet had ceased flushing. The toilet was repaired; however, the tenants submitted they went 10 days without use of the toilet before it was replaced by the landlord.

The tenants stated that when the June 11 flood occurred they had just returned home from the hospital, that it was late in the evening and that they did their best to clean.

They acknowledged that they may have been short with the downstairs occupants, as the male tenant had been quite ill. The tenants stated they did not know where the February, 2010, flood had originated.

The plumbing invoice indicated "W.C. at least 30 years old no parts available." The tenants had informed the landlord's daughter, early in the tenancy, that the toilet was a problem. On August 3, 2010, the tenants sent the landlord's lawyer a facsimile to report that the toilet had ceased flushing. The toilet was repaired; however, the tenants submitted they went 10 days without use of the toilet before it was replaced by the landlord.

The tenants submitted photographs showing ivy growing on the side of the house, the basement unit entrance with multiple items outside in the walk-way, a broken fence and gate latch, an area of decking that had rotted; a south entrance ramp that has rotted in one area, a picture of the stove showing missing knobs, a new toilet that has been installed on the old pedestal with tiles that have fallen off around the pedestal and the original toilet.

The tenants stated that the wood floor by the sliding door had been in the current state at the start of the tenancy. The tenants did not notice the floor problem when the move-in condition inspection was completed.

The tenants have a pool maintenance person; they have kept the garden up and dealt with a morning glory problem after the inspection was completed on June 11, 2010.

The tenants denied that any mold was present and stated that after the June 11, 2010, inspection they hired a cleaner, supported by the cancelled cheque submitted as evidence. The tenants did place some nails in the gate in an attempt to make repairs. The toilet seat was replaced and the cost deducted from rent as the hinges were corroded. The bathroom tiles began to fall off of the toilet pedestal early in the tenancy.

In relation to the garden the tenants agreed that there were flowers when they moved in and that the landlord's daughter had removed some ivy the year after the tenants moved in; however, not all of the ivy had been eliminated. The tenants stated that the ivy problem pre-dated their tenancy and that they are not responsible for ivy eradication. The tenants did not agree with the landlord's submission that some areas that had flowers currently do not; one bush died over a winter and the tenants paid to have it removed.

The tenants submitted that the occupants in the lower unit have behaved badly, been abusive toward them and have spit on their vehicle. The tenants acknowledged that some comments have been made referencing the male occupant's mental health, in response to his poor behaviour. The tenants felt that until the Notice was issued on June 11, 2010, there had not been any problems with the downstairs occupants and that the relationship had been without issue. The tenants denied having called by-law enforcement or having tampered with mail or garbage tags.

Once the Notice was issued the occupants began making faces, gestures and used expletives against the female tenant. The tenants submitted that since June, 2010, they have been bullied by male the occupant.

The tenants supplied copies of 2 hand-written letters from neighbours who describe the tenants as quiet and friendly over the past 2 and 3 years they have known them.

The tenants supplied a copy of a diary they have kept since June 1, 2010; outlining disturbances caused by the occupants of the lower unit and their contact with the landlord. The tenants raised the issue of the legality of the lower suite.

The tenants want the landlord to make the following repairs:

- gate and fence,
- replace 2 knobs that are missing from the kitchen stove;
- the door to the outside deck; and
- the tiles around the toilet.

The landlord acknowledged her responsibility for the gate and fence.

Analysis

The tenants have applied to cancel a Notice ending tenancy for cause issued on July 21, 2010; the effective date of the Notice was August 31, 2010. In a case where a tenant has applied to cancel a Notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

After considering all of the written and oral submissions and photographs submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenants have:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health, safety or lawful right of the occupants of landlord;
- put the landlord's property at significant risk,
- caused extraordinary damage to the rental unit; or
- failed to complete repairs and breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In consideration of the reasons given on the Notice ending tenancy, I have based on my assessment, in part, on the meaning of the terms upon which the Notice was issued.

I have referenced ***Black's Law Dictionary, sixth edition***, which defines interfere, in part, as:

> "To check; hamper. Hinder; infringe; encroach; trespass; disturb…to enter into, or take part in, the concerns of others."

I find that a significant disturbance would be one which was substantial or serious in nature and, that serious jeopardy must reflect a situation, as defined by ***Black's Law Dictionary*** that includes a "danger; hazard; peril." In order to find that the tenant's have engaged in activity that has placed the landlord's property at significant risk, I must find that the damage is substantial, serious and posed harm, danger or loss.

I have also considered section 32 of the Act, which provides:

Landlord and tenant obligations to repair and maintain

> *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.*
>
> (Emphasis added)

In relation to the conflict that has been reported between the tenants and the occupants who reside in the lower unit; I have considered the testimony of the occupants alleging

the tenants have disturbed them through a number of avenues. The landlord submitted that the tenants have significantly interfered with or unreasonably disturbed the occupants.

There is no evidence before me that the tenant's have tampered with mail. The tenants and occupants do not share a mail box and, in fact, the male occupant stated they obtained a postal box for their own use 1 year ago, while the female occupant testified that they obtained the postal box prior to moving into the unit. The landlord has a responsibility to ensure that each unit is given a separate mail slot, in order to avoid one party having access or any responsibility for the other's mail and, while some of the occupant's mail may have made its way to the tenant's mail slot, I find there is no convincing evidence that any mail tampering has occurred.

The male occupant testified the tenants had been very rude to a Telus installer; however, there was no evidence before me that this conflict significantly interfered with or unreasonably disturbed the occupants. There was no evidence of any request made to the landlord by the occupants, requesting access to the upper unit for Telus installation or of any notice given by the landlord to the tenants that entry was required under section 29 of the Act; therefore, the tenants had no obligation to allow access to their unit. I find that even if the tenants had been rude to the Telus installer, this does not constitute significant interference upon which an end of tenancy may be based.

The balance of the complaints made by the occupants failed to demonstrate any disturbances that I find would be constituted as significant. It is not unreasonable to accept the tenant's submission that sound-proofing in the home is insufficient, as the tenants are also able to hear day-to-day sounds of living made by the occupants.

There is no evidence that the tenants were responsible for a window falling from a ledge; even if the tenants had been walking heavily above the occupant's room, it is unreasonable to find that the tenants had the power to purposely cause this damage.

In relation to comments made by the tenants to the male occupant; each party alleges that the other has been abusive and inappropriate. The tenants alleged the male occupant spit on her car and, her acknowledgement that comments were made to the male occupant, do not form the basis of any significant interference or disturbance, but a response to what was reported to have been inappropriate behaviour by the occupant. In fact, I find, on the balance of probabilities that it is likely the occupants may have played an equal role in any conflict that has occurred.

There was no evidence before me of specific reports made to the landlord of disturbances caused by the tenants, no investigation of reports made to the landlord, no warnings issued by the landlord to the tenants in relation to their behaviour or any other history that supported the allegations made by the occupants. The landlord's letter to the tenants dated June 15, 2010, indicated the landlord would investigate the validity of complaints made; however, there was no evidence before me that this occurred prior to

the landlord issuing the Notice ending tenancy. Therefore, I have dismissed the balance of the allegations made by the occupants as unsubstantiated and insignificant in nature.

The tenant's supplied letters of reference from immediate neighbours; both of which are positive and contradict the tone of the relationship that has developed between the tenants and the lower occupants. I found this evidence compelling, in that they show the tenants to be reasonable, quiet people.

In relation to seriously jeopardizing the health, safety or lawful right of another occupant or landlord and placing the property at significant risk; there is no evidence before me of any health or safety issues that have been caused by the tenants. There is also no evidence before me of any breach of the Act by the tenants that impacted a lawful right of the landlord.

After the flood in February, 2010, there was no investigation carried out by the landlord, who submitted that she felt this was an isolated incident. The tenant's stated they were unaware the flood occurred and, in the absence of any entry by the landlord to explore the cause of the February flood, I find that the landlord was unconcerned and that no blame may be placed on the tenants.

The flood in June, 2010, did occur as a result of an overflowing toilet in the tenant's unit. The occupants emailed the landlord, who made contact with the tenants the next day. The flood occurred late at night; the tenants did their best to clean up, as they had just returned home from the hospital. By the next day the landlord was already aware of the flood, so there was no delay in relation to providing the landlord with an opportunity to respond to the flood.

There is no evidence before me that the tenants caused this flood through any negligence on their part. There is also no evidence before me of any serious jeopardy to the health or safety of the occupants or landlord that occurred due to any action of the tenants. The occupants had to clean up what was described as contaminated water, but no evidence of health risk was submitted as evidence; nor was there any evidence before me of any damage that occurred to the property as a result of negligence.

I have considered the reasons for the notice in relation to the tenants having caused extraordinary damage to the unit and a failure to make required repairs to the unit. The unsigned "additional terms" attached to the tenancy agreement referenced the pool and garden. The terms required the tenants to maintain the pool and garden on a regular basis and to keep the garden to the standard in which it was rented; a failure to do so would result in an additional $250.00 per month payment to the landlord, who would then assume those duties.

The tenants did not dispute the fact that they had accepted responsibility for maintenance of the yard and pool. Cancelled cheques showing expenditure for pool maintenance for April, May and June 2010, was supplied as evidence. The photograph taken of the pool by the landlord on June 11, 2010, showed the presence of some algae

in the pool, however; I am unconvinced that the presence of algae placed the property at significant risk or seriously jeopardized the landlord's property. The landlord may have never allowed the pool to develop any algae, but there was no evidence before me of any extraordinary damage or significant risk posed by the state of the pool on June 11, 2010.

Several photos showing a limited portion of the garden in its current state were provided as evidence. There was no evidence before me of the state of the gardens at the start of the tenancy; no map of plantings that were present, no schedule of maintenance that was expected or agreed upon; no direction as to responsibility for replacement of plants that might die; no watering instructions or any other tangible, specific instructions that would allow the tenants to maintain the garden "to the standard by which the property was rented." There was no record before me as to what that standard was and what standard was agreed to by the parties.

Section 6(3) of the Act, provides:

> *(3) A term of a tenancy agreement is not enforceable if*
>
> > *(a) the term is inconsistent with this Act or the regulations,*
> > *(b) the term is unconscionable, or*
> > ***(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.***
>
> (Emphasis added)

The tenants have made efforts to look after the garden and pool; however, I find that the absence of specific, measurable expectations provided and agreed to at the start of the tenancy renders the additional terms of the tenancy agreement unenforceable. While the landlord most certainly has high expectations in relation to maintenance of the garden and pool, I find that the additional terms of the tenancy agreement failed to clearly express the obligations of the tenant's. The tenants are making efforts to carry out maintenance and care; however, in the absence of a clearly expressed expectation with clearly measurable outcomes, I find that the additional terms are unenforceable and that the reasons on the Notice ending tenancy in relation to the pool and yard is of no force.

Further, Residential Tenancy Branch policy suggests:

> *Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds... The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.*

I find this a reasonable stance and a policy which should guide the tenancy from this point forward.

In relation to the carpet cleaning receipt issued by the tenants; the receipt indicated that the work was booked prior to July 11, 2010 and was completed on July 12, 2010. The tenant's letter dated July 11, 2010, outlined a number of efforts made in response to the landlord's concerns regarding the state of the home; however, the landlord decided not to complete an inspection to assess the efforts made by the tenants.

The landlord interpreted the tenant's July 11, 2010, letter as an indication that the tenants would not comply with her instructions given in writing on June 15, 2010. Within one week of receiving the tenant's letter the landlord issued the Notice ending tenancy without having provided the tenants the benefit of another inspection of the property.

The landlord has submitted that the tenants breached a material term of the tenancy that was not corrected within a reasonable period of time after written notice was given, but the Notice ending tenancy was issued without the landlord even returning to assess the efforts made by the tenants. I have not accepted the landlord's submission that the tenants' letter of July 11, 2010, was proof of the tenant's refusal to comply. The landlord had a responsibility to investigate further, before issuing the Notice.

Even if the landlord had re-inspected the rental unit I would not find that there had been a breach of the tenancy that supported eviction. The photographs submitted by the landlord indicated that the carpets were dirty, however; I find that dirty carpets do not constitute extraordinary damage.

There was no evidence before me of mold in the rental unit; the landlord asserted there was mold, but no independent analysis was provided to support this submission. The photographs showed darkened grout in the tile and hardwood floors, however; I find, on the balance of probabilities, and in the absence of any independent analysis, that there was no proof mold or any other extraordinary damage had occurred as a result of the actions of the tenants.

The tenants are required to keep the rental unit in a reasonably clean state. It is obvious that the tenants are not maintaining the home to the standard that is desired by the landlord, however; the state of the rental unit must only be reasonable and not constitute extraordinary damage or place the property at significant risk and I find, on the balance of probabilities that this has not occurred.

This does not mean that the landlord will not be in a position to claim costs for any damage, beyond normal wear and tear, at the end of the tenancy, once a move-out condition inspection report is completed. Consideration must be made calculating the depreciated value of items such as carpeting; so the longer a tenancy lasts, the less value some items will hold.

In relation to the tenant's submission that the landlord complete repairs to the rental unit, I find, pursuant to section 62(3) of the Act that the landlord must ensure that the fence

and gate, kitchen stove knobs, the door to the outside deck and the tile around the toilet are inspected and repaired as necessary no later than January 31, 2011.

The toilet has been repaired by the landlord and an Order is not required.

I have enclosed a copy of *A Guide for Landlords and Tenants in British Columbia* for reference by each party.

The parties are encouraged to consider the *Fact Sheet – Resolving Disputes on Your Own*, which has also been enclosed for reference.

As the tenant's application had merit I find that the tenant's are entitled to the $50.00 filing fee which may be deducted from the next month's rent owed.

The tenants are warned that deductions from rent owed may be made only when given the explicit permission of the landlord, as emergency repairs defined and as allowed by section 33 of the Act, or as the result of an Order issued.

Conclusion

As I have determined that the landlord has submitted insufficient evidence to establish that she has grounds to end this tenancy pursuant to section 47 of the Act, I hereby set aside the One Month Notice to End Tenancy, dated July 21, 2010, and I order that this tenancy continue until it is ended in accordance with the Act.

The landlord has been Ordered to assess and make repairs as set out in my analysis, no later than January 31, 2011.

The tenants will deduct the $50.00 filing fee from the next month's rent owed.

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: December 30, 2010.

Dispute Resolution Officer