

## **DECISION**

Dispute Codes      ERP, RP, MNDC, RR, FF

### Introduction

This hearing dealt with the tenants' request for repairs; emergency repairs; monetary compensation for damage or loss under the Act, regulations or tenancy agreement; and, authority to reduce rent for repairs, services or facilities not provided. The landlords did not appear at the hearing. The tenant submitted registered mail receipts as evidence that the landlords were served with the tenants' Application for Dispute Resolution and evidence via registered mail sent to the landlords' address that appears on the tenancy agreement. A search of the tracking numbers showed that the tenants' application and evidence sent to the landlords on October 23, 2010 was refused by the recipients and the evidence sent on November 12, 2010 was successfully delivered on November 15, 2010.

Section 90 of the Act provides that a document given or served by registered mail is deemed to be received on the fifth day after mailing. Where a document is served by registered mail the refusal of the party to either accept or pick up the mail does not override the deeming provision. Thus, service continues to be deemed to have occurred on the fifth day after mailing. In this case, I was satisfied the landlords were served with the hearing documents I proceeded to hear from the tenant without the landlords present.

### Issues(s) to be Decided

1. Is it necessary to issue Orders to the landlords for emergency repairs?
2. Is it necessary to issue Orders to the landlords for repairs?
3. Have the tenants established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement, and if so, the amount?

4. Are the tenants authorized to reduce future rent payable for repairs, services or facilities not provided?

### Background and Evidence

I was provided undisputed background information as follows. The tenancy commenced May 15, 2010 and the tenants are required to pay rent of \$2,300.00 on the 15<sup>th</sup> day of every month. The rental unit includes two full bathrooms and one half bathroom. The landlords did not prepare a move-in condition inspection report.

At the time of making this application, the tenant was requesting emergency repairs with respect to a blocked sewer line and loss of heat and hot water. The tenant confirmed that since making this application the emergency repairs were resolved.

Upon enquiry, the tenant submitted that the repairs that remain outstanding at the time of this hearing are:

1. The gas to the gas fireplace has been shut off because of the condition of the fireplace.
2. The wood fireplace cannot be used until the bricks are inspected and the gas fireplace is repaired.
3. The bathroom tiles in the upstairs bathroom are cracked and lifted.
4. The toilet on the middle floor is cracked.
5. The wooden exterior steps are unpainted and very slippery.
6. The handrail to the deck is loose.

The tenant submitted that shortly after the tenancy commenced he sent the landlord emails and tried calling the landlords several times with respect to repair issues but had little success. On June 28, 2010 the tenant paid for an inspection of the home during which time the inspector noted several deficiencies. On July 20, 2010 the tenant sent the landlords a registered letter outlining the repair issues. Except for the emergency repairs, the landlords have not repaired the above items.

The tenants are seeking compensation in the amount of \$4,873.00 for 18 repairs and services not provided by the landlords during the tenancy, as follows:

<u>Item no.</u>	<u>Description</u>	<u>Claim</u>
2.	Wood fireplace not working	1,179.00
3.	Lack of handrail	184.00
4.	Unclean stove	96.00
5.	Cracked bathroom tiles	471.00
6., 7., 8., 9.	Loose heating grills, Unsafe external socket, lack of lock to den, light in carport	589.00
10.	Loose handrail to deck	308.00
11., 12., 13.	Slippery wooden steps to deck, lack of garden maintenance, overflowing gutters	250.00
14.	Loss of heat October 14 - 15	250.00
15.	Missing kitchen door	Nil
16.	Blocked sewer October 15 – 22	11.00
17.	Cracked toilet	54.00
18.	Loss of hot water Oct 14 - 22	<u>303.00</u>
	Claim for loss of use and enjoyment	\$ 4,873.00

The tenants based many of the above requests for compensation upon the area of the room or space related to the item needing repair or the service multiplied by the number of days without repair or service. For example, the tenants requested compensation of \$1,179.00 for the inoperable gas fireplace based upon the area of the lounge (20 square meters) multiplied by the number of days the fireplace has not been operational. In addition to the above claim for compensation, the tenants are seeking compensation for the following out of pocket expenditures:

Inspection of rental unit

\$ 223.13

Handrail for interior stairway	185.13
Furnace filter	27.99
Registered mail costs x 3	<u>29.62</u>
Total expenses	\$ 465.87

The tenant explained that he had concerns about the safety and operation of many of the mechanical systems in the rental unit as there did not appear to be evidence of regular maintenance or inspections. Having little or no response to these concerns by the landlords the tenant proceeded to request an inspection by Synergy Mechanical Ltd.

The tenant explained that his wife requires the use of handrails to negotiate stairs and that the lack of handrails in the rental unit was unsafe and difficult for his wife. Thus, the tenant proceeded to purchase the handrails and install them in early September 2010.

In addition to compensation for repairs and services not provided up to the date of this hearing, the tenants are seeking authorization to reduce future rent payable. When the application was made the tenants sought a rent reduction \$1,500.00 per month; however, the tenant explained that amount reflected a lack of heat and hot water. As of the date of this hearing, the tenant estimated the outstanding repairs diminish the value of the tenancy by approximately \$200.00 per month.

Provided as evidence for this hearing were the tenants' calculations for compensation, correspondence to the landlords and registered mail receipts for the correspondence, the invoice from Synergy Mechanical, receipts for the handrails and supplies, a photograph of the bathroom with broken tile, a copy of the Danger Notice of Hazardous Condition issued by Terasen Gas on October 14, 2010.

### Analysis

Upon consideration of all of the evidence before me, I make the following findings.

### **Emergency Repairs**

As the tenant confirmed that there are no outstanding emergency repairs at present, I do not issue any Orders to the landlord with respect to emergency repairs.

## Repairs

With respect to repairing and maintaining a rental unit, the Act provides that the landlord has certain obligations under section 32 of the Act. Section 32(1) 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.

It is important to note that section 32(5) provides that the landlords obligation to repair and maintain the rental unit applies whether or not the tenant knew of the landlord's failure to repair and maintain the unit at the time of entering into the tenancy agreement.

With respect to the tenants request for repairs, I find as follows.

Nature of repair	Finding
1. The bathroom tiles in the upstairs bathroom are cracked and lifted.	Upon review of the photographs, I am satisfied the bathroom tiles are cracked and several have lifted. I am satisfied the current condition of the bathroom tiles do not meet the minimum standard set by the Act and the tiles must be repaired or replaced. The landlord is ORDERED to repair or replace the cracked and lifted tiles within two weeks of receiving this decision.
2. The toilet on the middle floor is cracked.	Upon review of the registered letter sent to the landlords on October 15, 2010 I am satisfied the toilet bowl is cracked. Upon hearing from the tenant I am satisfied the

	tenant does not use the toilet as a result of the cracked bowl for fear of breaking the toilet. The landlord is ORDERED to repair or replace the cracked toilet bowl within two weeks of receiving this decision.
3. The wooden exterior steps are unpainted and very slippery.	In the absence of any evidence to the contrary, I accept that the exterior steps are very slippery. I ORDER the landlord to take appropriate action to give the steps better traction within two weeks of receiving this decision.
4. The handrail to the deck is loose.	In the absence of any evidence to the contrary, I accept that the exterior handrail is loose. I ORDER the landlord to take action to secure the handrail within two weeks of receiving this decision.

### **Tenants' Compensation**

Where a tenant requires repairs or an inspection of a potentially unsafe item, the tenant's course of action is to make a request to the landlord take corrective action. If the landlord does not respond to the tenant's request within a reasonable amount of time the tenant may make an Application for Dispute Resolution and request repair orders be issued to the landlord. Except in the case of emergency repairs, the Act does not permit a basis for a tenant to make repairs to a rental unit and seek compensation from the landlord without prior authorization from the landlord or a Dispute Resolution Officer.

In this case, the tenant made expenditures for installation of handrails and purchase of a furnace filter. I find these expenditures do not relate to emergency repairs, as defined by section 33 of the Act, and are not recoverable by the tenants. While the tenant produced the mechanical inspection report to support his requests for repairs and compensation, the tenants obtained the services of the inspection company on their own accord and not upon prior authorization of a Dispute Resolution Officer. In other words, I find the tenants should have taken alternative steps to resolve their concerns

before enlisting the services of the mechanical company. Finally, registered mail costs associated with communicating with the landlord are not recoverable under the Act. Therefore, I dismiss the tenants' claim for recovery of \$465.87 from the landlords.

Section 28 of the Act protects a tenant's right to quiet enjoyment of the rental unit. Quiet enjoyment includes freedom from unreasonable disturbance, exclusive possession of the rental unit and use of common areas free from significant interference. A breach of quiet enjoyment may be found where a landlord's action, or inaction, renders the unit unfit for occupancy for the purpose for which the unit was rented. A breach of quiet enjoyment may be found where the landlord allows the property to fall into disrepair so that the tenant cannot continue to safely live in the rental unit. It is important to note that temporary discomfort or inconvenience does not constitute a breach of quiet enjoyment. In addition, it is necessary to balance the tenant's right to quiet enjoyment and the landlord's right and responsibility to repair the unit.

In awarding compensation for loss of quiet enjoyment I considered the amount of disruption to the tenants, the reason for the disruption, and whether or not the landlord made his best efforts to minimize any disruptions to the tenants.

I find the tenants' claim for compensation of \$4,873.00 for repairs not made and loss of use and enjoyment of the rental unit to be excessive. While I find the tenants' calculations are mathematically logical, I find the calculations do not accurately reflect the actual loss incurred by the tenants. For instance the tenants calculated the loss resulting from inoperable fireplaces based upon the area of the rooms in which the fireplaces are located. I do not accept that the rooms are entirely unusable without a fireplace. Therefore, I have estimated the tenant's compensation based upon my estimated devaluation of the tenancy.

Upon review of the advertisements of the rental unit placed by the landlords prior to the tenancy commencing, I am satisfied the landlords advertised the unit as equipped with a gas fireplace. Based upon the tenant's testimony, I am satisfied the fireplace was a

feature that made the unit more desirable. Therefore, I am satisfied the tenants have suffered a restriction in use of a service or facility and I award the tenants a rent abatement of \$100.00 per month from the time their tenancy started. As at the date of this decision I calculate a total award of \$800.00 (\$100.00 x 8 months) for loss of use of the fireplace. The tenants are further authorized to reduce the monthly rent by \$100.00 until such time the fireplace is repaired and in an operational condition.

Upon review of the tenants' correspondence to the landlords dated June 15, 2010 and July 19, 2010, I accept that the stove of the rental unit was thick with grease and took approximately six hours to clean. I find the landlords were obligated to provide a clean stove at the beginning of the tenancy and I award the tenants \$96.00 for time spent cleaning the stove.

Upon review of the photographs and the tenant's testimony, I am satisfied the condition of the bathroom floor and cracked toilet have devalued the tenancy. I award the tenants \$100.00 per month for a total award of \$800.00 for loss of use and enjoyment of these bathrooms.

With respect to the tenants' claim that the landlord failed to sufficiently maintain the garden and cut the grass I find as follows:

Residential Tenancy Policy Guideline 1 provides that tenants of a single family dwelling are generally responsible for grass cutting whereas a landlord is responsible for yard maintenance of multi-unit buildings. In this case the rental unit is a duplex unit and the landlords manage both sides of the building. The tenancy agreement is silent with respect to yard maintenance; however, the tenant submitted the landlord was to provide yard maintenance and the landlords did cut the grass once. I find the advertisement of the rental unit supports the tenants' position as it states "Tudor style side by side duplex including garden service..." I accept the undisputed evidence before me that the landlord insufficiently maintained the yard which resulted in long grass and weeds. I accept that this interfered with the tenants' ability to enjoy the residential property.



Therefore, I award the tenants \$50.00 per month for the period May 15 through October 15 with October 15 being the end of the growing season. The tenants are awarded \$250.00 for loss of use and enjoyment of the yard.

The tenants claimed compensation for loss of use and enjoyment of the rental unit related to emergency repairs for loss of heat, loss of hot water and a blocked sewer line for two of the bathrooms. With respect to these claims I find as follows:

Residential Tenancy Policy Guideline 6: Loss of Quiet Enjoyment provides that temporary loss or inconvenience does not constitute a breach of quiet enjoyment. I find the loss of heat between October 14 and October 15, 2010 to be temporary in nature. The blocked sewer line serviced two of the three toilets and loss of use of these two toilets between October 15 through October 22, 2010 amounts to an inconvenience since a third toilet was operational. I am satisfied that the tenants were without hot water from October 14 and October 22, 2010 and this was more than a temporary inconvenience since the tenants had to shower elsewhere. I award the tenants compensation of \$200.00 for loss of hot water.

I do not provide the tenants with compensation for the remainder of the items claimed with this application. Rather, the landlords have been given ORDERS for repairs the tenant has identified as outstanding. If the landlords fail to satisfy the ORDERS the tenants are at liberty to make another application for compensation and/or alternative remedies for the landlords' failure to comply with the ORDERS.

I award the filing fee to the tenants as the tenants have established that the landlords failed to sufficiently respond to requests for repairs and have failed to meet obligations under the Act and tenancy agreement.

In summary, the tenants have been awarded the following amounts:

Loss of use of fireplaces	\$ 800.00
Cleaning of stove	96.00

Loss of use and enjoyment of bathrooms	800.00
Loss of use and enjoyment of yard	250.00
Loss of hot water for 8 days	200.00
Filing fee	<u>50.00</u>
Monetary Award to tenants	\$ 2,196.00

The tenants have been provided a Monetary Order in the amount of \$2,196.00 to serve upon the landlord. The tenants are also authorized to withhold \$2,196.00 from a subsequent month's rent in satisfaction of this award.

In addition to the Monetary Order provided above, the tenants monthly rent payment is reduced by \$100.00 until such time the fireplaces are repaired and operational.

#### Conclusion

The landlords have been issued repair orders. The tenants have been provided a Monetary Order in the amount of \$2,196.00 that may be satisfied by withholding that amount from rent otherwise payable. The tenants' monthly rent has been reduced by \$100.00 until such time the fireplaces are repaired and operational. With the exception of the fireplaces, the tenants are at liberty to make a subsequent application should the landlords fail to comply with the repair orders issued to the landlords.

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 15, 2010.

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Dispute Resolution Officer