

## **DECISION**

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

### **Introduction**

This application was brought by the tenants seeking rent abatement, a rent reduction, an order for landlord compliance with the legislation, an order for repairs and recovery of the filing fee for this proceeding.

At the commencement of the hearing, the parties advised that a bathroom window that would not close and which had been the cause for this application had now been repaired. Therefore, all claims but that for rent abatement and filing fee have been rendered moot.

### **Issues to be Decided**

This application now requires a decision on whether the tenants are entitled to a monetary award for rent abatement and in what amount.

### **Background and Evidence**

This tenancy began on February 10, 2010 under a fixed term agreement to February 28, 2011. Rent is \$995 per month and the landlord holds a security deposit of \$497.50 paid on February 5, 2010.

During the hearing, the tenants gave evidence - supported by copies of a series of emails - that the bathroom window in the rental unit would not fully close. The tenant

stated the gap was twelve inches and the landlord's agent stated that it appeared closer to two inches to her. The tenant added that the gap varied according to the weather and was more commonly the greater measure.

The tenants first advised the agent on February 11, 2010 followed by a series of further emails, telephone calls and personal attendance at the agent's office but the repair was not made until late October of 2010, a period of approximately eight months.

The agent noted that other maintenance items had been corrected promptly but the window was eventually remedied as part of an upgrade to replace all of the windows in the building, a project delayed due to the time needed to fund the \$20,000 project. She stated that, in September 2010, it took estimates from three different service providers before one was found that could replace the old wood frame windows with vinyl units

The tenants stated they had done a makeshift repair using plastic but that it often came off because of wind and rain. In addition to the discomfort in inclement weather and increased noise from not being able to close the window, the tenants were also concerned about the security vulnerability posed by a partially opened window.

## **Analysis**

Section 32(1)(b) of the *Act* obliges a landlord to maintain a residential property in a state of repair that make it suitable for occupation by a tenant, taking into account the age, character and location of the building.

In this matter, I find that the landlord has fallen short of meeting that obligation and that the tenants are entitled to an abatement of a portion of the rent for the period in question.

I find that the loss of value of the rental unit to the tenants was \$100 for each of the eight months the window was defective and that the tenants are entitled to recover the \$50 filing fee for this proceeding from the landlord.

## **Conclusion**

As authorized under section 62(3) and section 72(2)(a) of the *Act* The tenant's, **I hereby order** that the tenants may withhold \$850 from the next rent due payment following receipt of this decision.

November 23, 2010