

## **DECISION**

Dispute Codes      MNR, MNDC, OLC, ERP, RP, PSF, LRE, LAT, RR, O, FF

### Introduction

This hearing dealt with an application by the tenant for a monetary order for emergency repairs, money owed or compensation for damage or loss, for the landlord to: comply with the Act, make emergency repairs, make repairs, provide services, suspend or set conditions on the landlords right to enter, authorize the tenant to change the locks, allow the tenant to reduce rent for repairs, other and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issues to be Decided

Is the tenant entitled to any of the above under the Act.

### Summary of Background and Evidence

This tenancy started July 1, 2010 with rent of \$1350.00, the tenant paid a security deposit of \$650.00.

The tenant testified that when she took possession of the rental unit that the back bedroom carpet was dirty, stained and smelled even after she had it professionally cleaned. The tenant has contacted the landlord in writing on more than one occasion to ask about replacement of the bedroom carpet, fixing the toilet leak, repairing the back deck/stairway, making the storage unit useable and verifying how the electrical is divided between the 2 rental suites, 275A and 275B.

The tenant stated that she tested the electrical by shutting off the power and determined that the laundry facilities, light in the laundry room and both hot water tanks run off her electrical panel. The tenants in 275B do not contribute to the electrical bill for the laundry room or hot water. The tenant's electrical bills for July 2010 through November 2010 total \$696.57.

The tenant stated that the storage shed in the back yard, which is part of her tenancy agreement, has been un-useable as it is full of mouse feces and urine. The tenant also stated that the landlord had provided the tenants in 275B with a key to 275A for an unknown reason; the key has since been given to the tenant.

The tenant stated that the landlord has come into her suite on numerous occasions without providing proper notice, demanded entry and when he has entered her rental unit has not only made inappropriate comments but yelled and sworn at the tenant. The

tenant stated that the landlord and his handyman have come in to look at the toilet leak, carpet and deck on more than one occasion and have since repaired the toilet leak.

The tenant stated that she has suffered a loss and is seeking compensation as she and her family have not been able to use the 3<sup>rd</sup> bedroom in the suite, the den, the storage shed or the deck for the entire duration of the tenancy. The tenant also maintains that her family's peace and quiet enjoyment have been impacted by the landlord's demands to enter the suite without proper notice and his inappropriate comments.

The landlord testified that the sun deck and stairs do need to be repaired and that he will have this work completed in the spring. The landlord stated that the carpet in the bedroom has nothing wrong with it and that he did not know how old the carpet was as he has only owned this property since 2004. The landlord stated that he has been a landlord for many years but that he did not know what the Residential Tenancy Act was and that he 'knows nothing about the law' but that he would now follow the law.

The landlord did admit in this hearing that the electrical for the laundry room ran off the tenant's electrical panel but maintains that prior to December 2010 he was not aware of this fact. The landlord stated the downstairs has been empty since December 2010 and that he would give the tenant \$20.00 to \$25.00 a month towards the electrical bill.

## Law

### Residential Tenancy Act **Section 32 Landlord and tenant obligations to repair and maintain**

(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.

### Residential Tenancy Policy Guideline **#1 Shared Utility Service**

A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable<sup>3</sup> as defined in the Regulations.

If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

### Residential Tenancy Regulation **Section 3 Definition of "unconscionable"**

For the purposes of section 6 (3) (b) of the Act [*unenforceable term*], a term of a tenancy agreement is "unconscionable" if the term is oppressive or grossly unfair to one party.

### Residential Tenancy Act **Section 28 Protection of tenant's right to quiet enjoyment**

A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;

### Residential Tenancy Act **Section 29 Landlord's right to enter rental unit restricted**

(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;

### Analysis

Based on the documentary evidence and undisputed testimony of the tenant, I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to a monetary order for money owed or compensation, a reduction in rent for repairs and authorization to change the locks.

I find that the landlord owes the tenant an amount calculated as followed:

Monthly Electrical Bill	30% of bill to be taken off monthly rent when downstairs unit is occupied by tenants \$696.57 July – Dec 2010 <b>30% = \$208.97</b>
Carpet Replacement Back Bedroom	\$200.00 rent reduction per month until replaced August 2010 – January 2011 = <b>\$1200.00</b>
Storage Unit	\$25.00 rent reduction per month until cleaned and useable August 2010 – January 2011 = <b>\$150.00</b>
Repair of the Deck/Stairwell	\$100.00 rent reduction per month until repaired August 2010 – January 2011 = <b>\$600.00</b>
Total Compensation Awarded to the Tenant	<b>August 2010-January 2011 = \$2158.97</b>

I Order the landlord pursuant to section 62(3) of the Act to complete the following repairs:

- Per Section 29 of the Act – Provide proper notice to the tenant for entry into the suite, immediate action.
- Per Section 32 of the Act - Replace the carpet in the back bedroom no later than February 4, 2011.
- Per Section 32 of the Act - Clean & make the storage shed useable for the tenant no later than Feb. 28, 2011.
- Per Section 32 of the Act - Repair the deck/stairwell no later than May 31, 2011.
- Per Policy Guideline 3 – Verify the electrical wiring with a licensed inspector and put in writing, how the electrical wiring is set up and the agreed to split for the monthly electrical bill for units A and B no later than February 4, 2011.

Effective February 1, 2011, until such time as each item has been addressed, the tenant may withhold the amounts outlined above from the rent due. The tenant may also withhold 30% of the electrical bill total if/when the lower unit is occupied by tenants and the electrical wiring for the laundry room remains hooked up solely to the tenant's electrical panel.

### Conclusion

I find that the tenant has established a monetary claim **for \$2158.97**. The tenant is also entitled to recovery of the \$50.00 filing fee.

I hereby authorize and order that the tenant may withhold **\$2088.97** from rent due for the monetary claim for compensation.

I hereby authorize and order that the tenant may withhold the amounts outlined above from the rent due effective February 1, 2011 until such time as each item has been addressed.

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: January 12, 2011

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Dispute Resolution Officer