

DECISION

Dispute Codes:

ERP, MNDC, RP, FF

Introduction

This hearing was convened in response to an application filed by the tenant on January 21, 2011 seeking Orders under the Residential Tenancy Act (the Act) as follows:

- A Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement - for loss of use (\$1000) - Section 67
- An Order for the landlord to make repairs to the unit – Section 62
- An Order for the landlord to make emergency repairs for health or safety reasons – Section 33
- To recover the filing fee from the landlord for this application (\$50) – Section 72

Both parties participated in the hearing and provided testimony under solemn affirmation. As well, the applicant forwarded evidence / submission prior to the hearing.

Issue(s) to be Decided

Should the landlord be ordered to make emergency repairs for health or safety reasons?

Should the landlord be ordered to make repairs to the unit?

Is the tenant entitled to the monetary amounts claimed?

Has the tenant established, on a balance of probabilities, that they have suffered a loss due to the landlord's neglect or failure to comply with the Act?

The burden of proving loss and damage rests on the claimant.

Background and Evidence

Rent is \$1500 per month payable on the first of each month. The rent is current.

The tenant claims that the landlord has been neglectful in respect to executing needed repairs to the unit roof which reportedly has suffered some water ingress and is suffering from some structural failing. The tenant claims that, as a result, moisture in the attic has contributed to mould which has resulted in health problems for the child in

the rental unit whose medical syndrome purportedly renders the child prone to respiratory infections. The tenant also seeks for the landlord to make structural repairs or attend to the remediation of the deck situated over the garage, which is purportedly failing and causing a failure in the garage drywall ceiling below and the consequent space between the deck and the garage ceiling. The tenant claims that the drywall ceiling in the garage is slowly deteriorating and crumbles under the strain of the garage door opener. The tenant claims that the deck has not been usable since June 2010. The tenant claims the deck issues have made the garage space below generally unusable and that it has been an unreliable storage area for the past seven (7) months. The tenant also claims that the front stairs are not structurally sound due to rot, as is the landing atop these stairs, and that the steps are not currently used and haven't been for two (2) months because of rot. One of the tenant's contractor estimates comments on the stairs as "rotten". The landlord disputes the stairs are rotted and in need of replacement or repair.

The tenant provided an abundance of evidence in support of their claims, including photographs, contractor quotes for the requested repairs to the roof, stairs, landing, deck and garage ceiling, as well as the clinical diagnosis and supporting medical information for the child in the rental unit.

The landlord does not dispute the tenant's claims respecting the need for repairs to all of the areas noted above except the stairs, and disputes the tenant's claim that certain darkened areas of the attic insulation prone to moisture are harbouring mould, and that they require any remediation. The landlord describes the darkened areas of attic insulation are the result of filtration over time – whereas other areas require drying, which will occur naturally after repairs have been done.

The landlord testified that they have already ascertained what repairs are required and have already contracted for the work to be performed as soon as the weather permits / improves. The landlord testified that the roof, deck and landing are scheduled to be repaired in March 2011, but are weather-dependent so cannot give specific dates, although it is undisputed that the roof is currently not leaking but is prone to leaking.

Analysis

On preponderance of the evidence and on the balance of probabilities, I have arrived at the following findings.

The medical information provided does not state that the child's genetic disposition makes her prone to respiratory infections. Although I accept that the child in this rental unit may well be suffering from respiratory issues, I am unable to conclude from the evidence that it is the landlord's *neglect or failure to comply with the Act* that is at the root of the child's issues.

The tenant has not provided compelling evidence of the need to address issues of, what the tenant asserts is mould in the rental unit. The tenant has not provided evidence of

the existence of mould in the rental unit, or that on the balance of probabilities that it is mould, that it is a type of mould which is known to be a danger or risk to human health.

I accept the landlord's sworn testimony that they are solemnly committed to the remediation of the building's issues of the roof, the deck, and the stairs landing. Therefore, I find it is not necessary at this time to order the landlord to make these repairs and I decline to so order. However,

I order that if the work on these areas of the roof, the deck, and the stairs landing is not completed by May 31, 2011, the tenant is at liberty to seek further remedy by filing for dispute resolution.

I find that in the absence of supporting evidence from the landlord, I prefer the evidence of the tenant in respect to the need for remediation of the front stairs and garage drywall ceiling. Therefore,

I order that these two items of the front stairs and garage drywall ceiling must be, at the discretion of the landlord, repaired or replaced. **I Order** that if the remediation of these areas is not completed by May 31, 2011, the tenant is at liberty to reapply for dispute resolution.

In respect to the tenant's application for compensation due to loss of use, I make the following findings. I find the tenant suffered a loss of use of the deck since June 2011.

I grant the tenant compensation in the amount of 5% of payable rent for each month of June through to October 2011 in the sum of \$450, and a set amount of \$150 for the period thereafter for a sum of **\$600**, with leave to reapply should the repairs not be completed by May 31, 2011.

I find the tenant suffered a loss of use of the front stairs for the months of December 2010, January 2011, and now February 2011.

I grant the tenant compensation in the set amount of **\$150**, with leave to reapply should the repairs not be completed by May 31, 2011.

I find the tenant suffered a loss of use of the garage for the past 7 months.

I grant the tenant compensation in the set amount of **\$175**, with leave to reapply should the repairs affecting the garage (the deck and the garage ceiling) not be completed by May 31, 2011.

As the tenant was successful in their application, they are entitled to recovery of the filing fee in the amount of **\$50**. The tenant's total entitlement is the sum of **\$975**.

Calculation for Monetary Order

Loss of use - deck	\$600.00
Loss of use – front stairs	\$150.00
Loss of use – garage	\$175.00
Filing Fees for the cost of this application	50.00
Total Monetary Award	\$975.00

Conclusion

The landlord is **ordered** to make repairs or provide replacement of the front stairs and garage drywall ceiling, as per the decision. I have **ordered** that the tenant may be conditionally at liberty to reapply for dispute resolution.

I have granted the tenant compensation for loss of use and recovery of the filing fee in the sum of \$975. **I Order** that the tenant may deduct this amount of **\$975** from future rent.

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*.