# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNR, MNDC

Introduction
This hearing was set to deal with an application by the tenants for a monetary order, including reimbursement for emergency repairs.

Both parties appeared and had an opportunity to be heard. The parties were not able to finish their testimony on the first date set for the hearing so it was continued on March 2, 2015, at 1:00 pm, a date and time convenient to all. The parties were able to complete their evidence on that date.

The tenants' evidence consisted of a written statement, a Fortis BC invoice and a municipal invoice. A 10 Day Notice to End Tenancy for Non-Payment of Rent had been filed when the application for dispute resolution was filed. When I pointed out that the application for dispute resolution did not include an application for an order setting aside the notice to end tenancy the tenant said that when he filed the application the lady asked him if he wanted to dispute the notice, he said yes and the appropriate box was ticked. The landlords said they wanted to deal with all issues.

The landlords said they had received copies of the utility invoices as well as invoices for repairs from the tenant. The parties agreed that the tenant had been fully reimbursed for the repair invoices.

It was not until the end of the hearing on March 2 that I reminded the parties that the *Residential Tenancy Act* forbids a tenant from withholding rent unless they have an arbitrator's order permitting them to do so or they have not been paid for emergency repairs.

The landlord never made an oral request for an order of possession. At the end of the hearing the landlord asked what steps they should take next and I directed them to the resources available from the Residential Tenancy Branch.

Issue(s) to be Decided

- Is the 10 Day Notice to End Tenancy dated January 14, 2015 valid?

- Are the tenants entitled to a monetary order and, if so, in what amount?
- Should a repair order be made and, if so, on what terms?

Background and Evidence

This month-to-month tenancy commenced May 1, 2014. After extensive negotiation and argument the parties agreed that the rent would be $1650.00, due on the first day of the month. In addition, the tenants were responsible for all utilities, would pay a security deposit of $825.00 and no pet damage deposit.

The rental unit is a detached home. Originally the home included a single car garage that is partly below grade. The roof of the former garage is a deck. The roofline of the house extends across the deck. The garage has been closed in and is now a storage room. This space may be accessed from the yard and from the basement of the house.

The city required the landlords to install a particular type of flooring on the deck because the area underneath is enclosed. This material was referred to throughout the hearing as Duradeck.

According to the landlord there is only one person in this community who installs Duradeck and he is busy.

The deck was not completed when the tenants looked at the unit in April. The landlord told the tenants that they were working on it. According to the landlords the written tenancy agreement specifically states that the deck will be completed “sometime in the future”.

When the tenants moved in the deck had a plywood floor but the Duradeck had not been installed.

According to the tenant when they moved in there was still building materials around the property that were not removed for a few days and the rental unit had not been properly cleaned. He said his wife had to clean the kitchen and the bathrooms before they moved in.

The tenant testified that they did not want to put their heavier patio furniture on the deck and then have to move it again when the Duradeck was installed. As a result they could not use the deck as they wished for May and June.

The tenant said the landlord promised that the deck would be finished by the end of May and he promised to give post-dated cheques for the balance of the year if the deck was finished. Neither event happened in May.

There was some toing and froing about the June 1 rent but eventually it was paid by the tenants.

At the beginning of June there was a big storm which included heavy rain and strong winds. As the tenants were moving some of their belongings into the storage area they discovered that water was coming through the unsealed deck.

The tenant testified that he called the landlord about the situation for several days before getting a response. He told her that he would not pay the June rent unless the deck floor was finished.

At the end of June the tradesman came to install the Duradeck. The tenant had his black truck and untarped boat parked near the house. He testified that he did not realize that the floor would have to be sanded before the adhesive and then the Duradeck was installed. The tenant testified that a thick blanket of sawdust was deposited on his truck, boat and everything in the storage room below. He said it took them a week to clean everything.

The rental unit has a gas stove. In July the oven quit working. The tenant says he made numerous calls to the landlord and after a month the oven was repaired. The tenant acknowledged that it was BBQ season and this was a minor inconvenience. The landlord pointed out that it was very hot that month.

In October the light fixture in the dining room quit working. The tenant says he left multiple messages but never received a response. He was very concerned because they were having a dinner party in a few days. Finally, on the date of the dinner party he had someone fix it. The landlord ultimately reimbursed the tenant for this expense.

On November 15 the gas furnace quit working. Over the next four days the tenant left messages for both landlords but did not receive a response. As it turned out, one landlord was seriously ill and the other was away on a trip.

Part of the issue was that the tenant did not have money on hand to pay a furnace repairman. Finally he found someone who was prepared to fix the furnace and wait for payment. In total they went four days without the furnace. They used the oven and space heaters in the children’s bedrooms for heat.

The tenant filed a copy of the gas bill which showed an increase in gas usage in November and a sharp increase in December.

The tenant left messages for both landlords that if he did not hear from them he would be stopping payment of the December rent cheque. He did not stop payment and the cheque went through.

In December the tenant tried repeatedly to call the landlords. Finally, they sent an agent to see him. He explained his concerns and she promised to get back to him. He never heard from her again. At the beginning of January he received a telephone call from another agent for the landlords (sister and daughter of). This person said that the first agent was no longer representing the landlords and a son/grandson would be taking things over.

Within days the tenant and the grandson met at the rental unit. The grandson gave the tenant a cheque for the full amount of the dining room light and the furnace repairs. The two also discussed compensation for the inconvenience experienced by the tenants but did not come to an agreement.

One of the major issues for the tenants was that they were required to pay a substantial amount for the furnace repairs in November and that the landlords' failure to repay this amount promptly caused them considerable financial hardship, especially over the Christmas season.

A week later the grandson delivered a 10 Day Notice to End Tenancy dated January 14, 2015. The notice claims that $1650.00, namely the rent due on January 1, was unpaid. The tenants filed this application for dispute resolution on January 19, 2015.

The tenant acknowledges that not only has he withheld the January rent but the February and March rents as well, pending the outcome of this hearing and the landlord attending to other repairs.

With regard to repairs the tenant testified that there is a leak into the downstairs bathroom that he reported to the landlord or one of their agents in November and December and that the situation keeps getting worse. Other repairs he says are required are the upstairs toilet is not working properly and the upstairs bathroom is very loud. The landlord says that after the first hearing they called a plumber but access to the rental unit is difficult to arrange.

His written material also refers to the patio door, fuse panel, the electrical outlets in the storage area, and the front door handle. The only evidence on these points was the landlord saying the electrical outlets are not required in a storage area and the tenant saying they worked when he moved in.

The tenants' written material also included a second list of maintenance concerns but almost no evidence was tendered on those issues.

Analysis

Section 26(1) of the *Residential Tenancy Act* provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulation or the tenancy agreement, unless the tenant has an order from the Residential Tenancy Branch allowing the tenant to withhold payment of all or any portion of the rent. This information is clearly set out on the 10 Day Notice to End Tenancy.

Section 33 does allows a tenant to make emergency repairs, as defined by the section, after following the procedure set out in the section. A landlord must reimburse the tenant for amounts paid for emergency repairs if the tenant gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed. Subsection (6) sets out the circumstances in which a landlord is not required to reimburse the tenant for the emergency repairs. If a landlord does not reimburse the tenant as required subsection (7) allows a tenant to deduct the amount from rent or to otherwise recover the amount.

In this case the tenants had been reimbursed for the emergency repairs several days before they were served with the 10 Day Notice to End Tenancy. At that point the tenants no longer had a legal right to withhold rent so the full January rent was due and owing. The 10 Day Notice to End Tenancy dated January 14, 2015, is valid.

Section 32 of the *Residential Tenancy Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that:

- complies with the health, safety and housing standards required by law; and,
- having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

If a rent unit does not meet this standard an arbitrator may order:

- the landlord to make certain repairs; and,
- that past or future rent be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

I find that there were some deficiencies in the rental unit that did amount to a reduction in the value of the tenancy agreement; most importantly the breakdown of the furnace in November. Although the landlords argued that the tenants did not mitigate their damages by having the furnace repaired on the first day I accept the tenant's explanation that they did not have the money. It was only because they were able to negotiate with someone that they were able to get the furnace fixed at all. The landlord's failure to have someone available to respond to emergency calls contributed to the length of time that this situation existed. The landlords' failure to promptly reimburse the tenants' for the expenditure, especially at time of year when Christmas and heating bills place greater demands on family budgets, made the hardship worse for the tenants. No reasonable explanation for the delay in payment was offered by the landlords.

A word about the gas bill submitted by the tenants - it was of no evidentiary value. Instead of burning gas in the furnace the tenants burned gas in the stove. Further, the large spike in usage is in December, after the furnace had been repaired.

The fact that the oven did not work for a few weeks during the hottest season of the year and a light fixture did not work for a few days are minor reductions in the value of this tenancy.

I am not satisfied on the evidence that the landlords promised that the deck would be completed by the start of this tenancy. Further, the only thing that was stopping the tenants from using the deck was their reluctance to move deck furniture twice. As a result, I find the fact that the deck was not completed until June comprises a minor reduction in the value of the tenancy.

One of the features of this rental unit was that it had storage space in the former garage space. As it turned out, this storage space was not weatherproof and the tenants' belongings got wet. There was no evidence that anything was damaged but the tenant did testify that many items had to be washed and dried.

The tenants' claim for cleaning for sawdust out of the truck and boat was very generally stated. Whatever work was done would not be the equivalent of a full detailing of both vehicles, as that would include shampooing the interior upholstery and carpets. Further there was no evidence of any steps taken by the tenants to mitigate this situation. On the other hand, landlords are responsible to tenants for damages, including cleaning, that result from repairs or renovations being made to a rental unit.

Having considered all of these complaints, but giving the most weight to the landlord's failure to respond to the complaint about the furnace in a timely manner and the landlord's failure to compensate the tenants for this expenditure in a timely manner I find that the overall value of the tenancy agreement was reduced by $825.00. Pursuant to section 72 this amount may be deducted from any rent due to the landlords.

The only significant evidence offered in support of the claim for repairs was with regard to the leak into the downstairs bathroom. The landlords are ordered to have qualified tradespeople inspect the situation as soon as possible and to make such repairs as may be recommended by those tradespeople. If the inspection is not completed and the recommended repairs contracted for within four weeks of the parties receiving this decision the tenants may apply to the Residential Tenancy Branch for such further order, including a reduction in rent, as may be appropriate.

The parties are directed to the information available from the Residential Tenancy Branch about the law relating to landlord's right of entry.

All other claims for repairs are dismissed with leave to re-apply, as there was just not enough evidence submitted in support of the claims.

The tenants did not pay a fee to file this application so no order with respect to the filing fee is required.

Conclusion

a. The 10 Day Notice to End Tenancy dated January 14, 2015, is valid.
b. The tenants are entitled to a monetary order in the amount of $825.00. Pursuant to section 72 this amount may be deducted from any rent due to the landlords.
c. The landlords are ordered to have qualified tradespeople inspect the situation in the downstairs bathroom as soon as possible and to make such repairs as may be recommended by those tradespeople. If the inspection is not completed and the recommended repairs contracted for within four weeks of the parties receiving this decision the tenants may apply to the Residential Tenancy Branch for such further order, including a reduction in rent, as may be appropriate.
d. All other claims for repairs are dismissed with leave to re-apply.

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: March 06, 2015

Residential Tenancy Branch