Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Optimum Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNR, MNDC, RP, FF

Introduction
This hearing dealt with an application by the tenants for a monetary order, an order setting aside a 10 Day Notice to End Tenancy for Non-Payment of Rent and a repair order. Both parties appeared and gave affirmed evidence.

Issue(s) to be Decided
- Is the 10 Day Notice to End Tenancy for Non-Payment of Rent dated January 4, 2016 valid?
- Should a repair order be made and, if so, on what terms?
- Should a monetary order be made in favour of the tenants and, if so, in what amount?
- Should any other orders be made and, if so, on what terms?

Background, Evidence and Analysis
The Rental Unit and the Tenancy Agreement
This one year fixed term tenancy commenced September 1, 2015, although the tenants obtained possession of the rental unit a few days earlier. The monthly rent of $1550.00 is due on the first day of the month. The tenants paid a security deposit of $775.00. There is a written tenancy agreement.

The rental unit is a single family home. There are two bedrooms on the main level, two bedrooms on the lower level, one full bathroom on the main level and a half bathroom on the lower level.

Move-In Condition Inspection Report
The tenants testified that the female tenant looked at the rental unit on her own and agreed to rent it. She said she paid a holding deposit at that time. The landlord testified that the tenants looked at the unit twice before renting it; the tenants said it was only once.

The tenants' old lease was expiring on September 15 so they were pleased when, on August 7, they received word that the application for tenancy had been approved.

The commencement date on the tenancy agreement was September 1, 2015, but the landlord agreed that the tenants could take possession earlier. The parties met at the rental unit on August 25. This was the first time the male tenant saw the rental unit.

The landlord presented the tenants with a one year fixed term tenancy agreement that included a clause requiring the tenants to move out at the end of the term. The tenants were not happy with this wording. After a short conversation the wording was changed to say that at the end of the term the owner or the tenants could apply for a new tenancy agreement.

The male tenant testified that he was upset with the negotiation and very disappointed with the condition of the unit. He felt that they had no alternative because it was too late to look for another place and they would lose their deposit. After the conversation about the terms of the tenancy agreement he went into the yard. He testified that he did not participate in the inspection because he was overwhelmed by the condition of the unit.

The female tenant testified that both the landlord and his assistant were at the unit. The assistant went around checking everything. The assistant reported that everything was fine and she signed the Condition Inspection Report. She did not walk around the unit nor did she add any comments to the report. She did notice that the plumbing was leaking.

The landlord testified that they had a short discussion about the terms of the tenancy agreement. Afterwards he talked to the female tenant while the male tenant looked around.

In support of their argument that the Condition Inspection Report did not reflect the state of repair and condition of the unit at the start of the tenancy the tenants submitted photographs of dirty stove elements, a dirty refrigerator, dirty kitchen cabinets, chipped kitchen counters, a dirty light fixture, and a dirty washing machine. The tenants also submitted a close-up photograph of debris in a gutter.

The tenants argue that because they did not walk around the unit with the landlord and the checklist that the report is not valid. They also argue that they signed the Condition Inspection Report under duress because there was no time to look for another place.

Section 23 of the *Residential Tenancy Act* does provide that the landlord and tenant must together inspect the condition of the rental unit; the landlord must complete the report in compliance with the regulations; and both parties must sign the report.

A tenant cannot retroactively negate a Condition Inspection Report they have signed by simply choosing not to participate in the move-in inspection. There is no evidence that the tenants were prevented or restricted in any way from walking through the rental unit, looking at anything, or recording any comments on the report before signing it. The fact that the tenants fled they had to go through with the tenancy agreement does not mean they were forced to accept the Condition Inspection Report as prepared by the landlord.

The photographs submitted by the tenants as proof of the lack of accuracy of the report are almost all from the kitchen; the room where the parties conducted their negotiations and signed the documents. None of the cleaning deficiencies were hidden. All the tenants had to do was look at the top of the stove, open the refrigerator door, or look at the kitchen cupboards and mark those deficiencies on the report.

The tenants filed very carefully written and very detailed evidence in support of their argument that the Move-In Condition Inspection Report is not binding on them so clearly they capable of doing a careful inspection and recording the details of deficiencies noted by them during that inspection on the report.

The landlord scheduled the inspection at a time when both parties were there; did not prevent the tenants from inspecting the unit or making comments on the Condition Inspection Report; completed the prescribed form; and subsequently provided the tenants with a copy of the report. The landlord complied with the legislation. It was the tenants' choice not to inspect the unit or make any comments on the Condition Inspection Report before signing it. They are bound by the consequences of their actions.

Kitchen Faucet

On September 21 the tenants first notified the landlord that the kitchen faucet was leaking at a steady rate. In October the landlord was at the unit and the tenants showed him the faucet. On November 25 the tenants sent the landlord another e-mail about the faucet. The correspondence points out that for two months the tenants had been turning off the shut-off valve for the sink to stop the water from leaking but now, even that did not work. The tenants' message said that is the sink was not repaired by Friday (November 27) they would make the arrangements themselves.

Nothing happened. On December 4 the tenants bought a faucet set at a cost of $82.07. On December 5 a plumber hired by the tenants replaced the kitchen faucet at a cost, for labour and applicable taxes only, of $210.63. His invoice says, in part: “Kit taps no longer any good leaking from multiple junctions Removed & installed a new customer supplied taps.”

On December 9 the tenant advised the landlord that the shower head had fallen off and insisted that it be repaired. The tenant testified that the landlord’s handyman came on December 10. The handyman did not have any of the parts required to fix the kitchen faucet but he did replace the shower head.

The landlord says that he told the tenants on December 9 that a plumber was coming on December 10. He says that the tenant never advised him that the kitchen faucets had been repaired so the plumber’s travel time was wasted, which resulted in extra expense for the landlord. Although the landlord filed detailed evidence he did not include an invoice from a plumber for a service call on December 10.

The landlord also argues that this was not an emergency repair and was made without the landlord’s prior authorization. The landlord is prepared to compensate the tenants for the materials but not the labour charge for this repair.

First of all, a landlord is responsible for maintaining the plumber in a rental unit. (Section 32)

Section 33 defines “emergency repairs” as repairs that are:

- urgent;
- necessary for the health or safety or of anyone or for the preservation or use of residential property; and,
- for the purpose of repairing a major leak in pipes [and for other listed repairs].

“Major” is not defined in the legislation. This repair was not an emergency repair when it was first reported to the landlord. However, by the time the tenants brought the plumber in two and a half months later it was leaking continually, even when the shut-off valve was closed. This rendered an important element of the only kitchen in this house almost inoperable. I find, that by the time the tenant hired the plumber, the situation with the kitchen faucet had escalate to an emergency repair.

The tenant did contact the landlord at least twice about the need for the repair, gave the landlord ample time to make his own arrangements, and provided the landlord with

copies of the invoices; thus complying with the requirements of section 33. There is no proof that a qualified plumber came to the rental unit on December 10 or that the landlord incurred any actual additional expense for a plumber's visit on that date. Further, there is no evidence that the repairs were not done at a reasonable cost.

I find that the landlord is responsible for the cost of these repairs, **$292.70**.

Bathtub Faucet
The tenants complained about the bathtub faucet from early in the tenancy. The tub dripped steadily.

The tenant testified that when the handyman came to the rental unit on December 10 he did not have any parts with him to replace the bathtub faucet.

A plumber did come to the rental unit on December 30 and repaired the tub and shower valve by replacing the cartridge. His invoice says he tested the drainage and saw no leaks. He siliconed and inspected the plumbing and recommended a re-pipe to the landlord.

Compensation for Leaking Faucets
The tenants claim $1860.00 for the inconvenience of the leaking faucets and having to use the shut-off valve for the kitchen sink. The tenants do not pay the water bill.

The landlord has an obligation to maintain the plumber in a rental unit. In this case the plumbing was not working properly and the landlord did not repair the problem in a timely manner.

Section 65(1) allows an arbitrator who has found that a landlord has not complied with the Act, regulation or tenancy agreement to order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement.

I find that the condition of the kitchen sink did reduce the value of the tenancy but the leaking bathtub faucet did not. I award the tenants the sum of **$310.00** for this item, which represents 5% of the value of this tenancy for four months.

10 Day Notice to End Tenancy for Non-Payment of Rent
The tenants withheld $292.70 from the January rent on the grounds that the kitchen faucet repair was an emergency repair. On January 4, 2016, the landlord issued a 10

Day Notice to End Tenancy for Non-Payment of Rent. The tenants filed an application disputing the notice within the five day period. The tenants have paid the February and March rent in full.

Section 26(1) requires a tenant to pay the rent when it is due unless the tenant has a right under the Act to deduct all or a portion of the rent. Section 33(7) allows a tenant whose landlord does not reimburse him or her for emergency repairs to deduct the amount from the rent. As I have already found that the kitchen faucet repairs were emergency repairs the tenants were entitled to deduct that amount from the rent.

As the deduction from the rent was permitted by the legislation the 10 Day Notice to End Tenancy for Non-Payment of Rent dated January 4, 2016 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the *Residential Tenancy Act.*

Bathroom Floor

Before the start of this tenancy the landlord replaced the vinyl flooring in the kitchen. There was some flooring left over so the landlord also had the flooring in the main floor bathroom replaced. The vinyl is light-coloured. There is at least one seam in the bathroom floor.

The flooring looked good at the start of the tenancy. Over time irregular dark shaped and sized spots have developed on the floor, which cannot be washed away. The tenants first reported the issue to the landlord on October 20. The dark spots have continued to spread over time.

The landlord testified that in his experience dark areas on a floor are moisture areas. He suggested to the tenants, and in the hearing, that the problem was caused by the tenants splashing too much water when they used the sink and bathtub and not wiping up properly, thereby allowing moisture to get under the vinyl surface of the flooring, The landlord points out that the plumber's invoice from December 30 says the pipes in the bathroom are not leaking.

The tenants suggest that perhaps the subfloor was wet when the vinyl was installed and that has led to the development of dark spots. The tenants point out that there are dark spots in the entry to the bathroom, well away from the sink or the bathtub; near the end of the vanity that is away from the sink; and none near the seams or edges of the floor.

When the tenants expressed concern about the possibility of mold the landlord had a friend, who is not a licenced tester, take moisture samples. When he found out the cost of analyzing the samples he did not proceed any further.

The landlord did agree that if no action is taken the situation will get worse. The issue is who is responsible for the damage, and therefore responsible for the repair.

Section 32(1) of the *Residential Tenancy Act* states that a landlord must 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.

While there is no actual evidence as to the cause of the dark spots the evidence appears to be that there is a moisture problem with the bathroom floor. It is common sense that if the problem is not addressed the situation will get worse, causing a bigger problem and more expensive repair.

The theory that the tenants are splashing too much water thereby allowing water to get under the edges and seams of the vinyl flooring is not consistent with the following fact:

- This is vinyl flooring intended to be used in a bathroom. It is supposed to be impervious to water; certainly the amounts of water splashed about in ordinary daily use.
- The dark spots are scatted, not contiguous, and many of them are away from the sink, bathtub, walls and seams.
- The problem appeared within three or four weeks of the installation.

The evidence is more consistent with a problem with the installation rather than the abuse of the rental unit by the tenants. This is an issue between the landlord and the installer.

The landlord is ordered to have the floor in the main bathroom repaired by a qualified flooring installer. At a minimum the repair must include: identification and rectification of the source of the moisture; replacement of any damaged subfloor; and replacement of the vinyl flooring. The landlord must provide the tenants with copies of any reports and invoices received from the installer.

I am not prepared to conclude, on the evidence before me, that the dark spots are harmful mold or that the tenants' health has been compromised by the situation to date. A qualified installer should be able to take the appropriate measures to avoid the spread

of possible mold spores when the old flooring is removed. If it develops that there was mold under the vinyl flooring and the repairs are not properly done, the tenants may make any application to the Residential Tenancy Branch that is appropriate.

I find that the situation to date only amounts to a cosmetic issue and has not interfered with the function of the bathroom. Accordingly, no monetary award will be made to the tenants for the state of the bathroom floor.

If the repairs are not started within one month of the receipt of this decision the tenants may apply to the Residential Tenancy Branch for any order that may be appropriate, including a claim for a rent reduction.

Furnace Duct Cleaning
On September 21 the tenants complained to the landlord about dirty vents and ducts. The tenants submitted photographs of a sticker on the duct work showing that in the spring of 2000 the ductwork had been cleaned and debris in some of the vents. The tenants testified that when the temperature dropped in the fall they did not want to turn on the furnace because they did not know what would blow out of the vents.

On September 23 the tenants reported that they had no heat and the temperature at night was in the single digits.

The landlord testified that they have looked after this property for two years so cannot say what maintenance was performed previously. They use the same person to clean the duct work at this property every year. It is not a truck mounted cleaning system; he uses a regular shop vac.

The landlord also testified that the temperatures in September were very unusual for this community which is why the furnace and ductwork had not been serviced by September 21.

On the evening of September 23 he advised the tenants that a plumber would be coming to the unit on September 25. The plumber reported that “a lot of dirt stuck was stuck in the middle of the air duct and it would be dangerous to light up the furnace which might cause a fire hazard”.

The landlord arranged to have their usual cleaner attend on September 27. He cleaned the ductwork with the shop vac.

The landlord says the furnace was lit and heating was provided as of September 30, 2015, however, the invoice he submitted from the service company says the work was done on October 30.

As set out *in Residential Tenancy Policy Guideline #1:Landlord & Tenant – Responsibility for Residential Premises* the landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications, or annually where there are no manufacturer's specifications, and is responsible for replacing filters, cleaning heating ducts and ceiling vents as necessary.

Duct work does not have to be cleaned annually. There are two factors that led one to the conclusion that it might be time to have this ductwork cleaned more thoroughly by a truck-based system:

- The only evidence of the last thorough cleaning indicates that is was done sixteen years ago.
- The landlord's description of how the premises were left by the previous tenants.

I order that the landlord have the ductwork cleaned by a company that uses a truck-based evacuation system. I recognize that the heating season is almost over and that I have already ordered an expensive and higher priority repair so I order that the ductwork must be cleaned on or before August 30, 2016. If this repair is not made as ordered, the tenants may apply for a further order.

Claim for Loss of Heat

There is no disagreement that the tenants were not able to use the furnace during some chilly days in September. The tenants reported the problem on September 21 and it was resolved by October 5, a total of fourteen days. Applying the criteria of section 65 I award the tenants' compensation for this item in the amount of **$77.50,** which represents a 10% reduction in the value of the tenancy for a half month.

Dryer Hose Cleaning

As set out in *Policy Guideline #1,* tenants are responsible for cleaning around the dryer; landlords are required to clean out the dryer exhaust pipe and outside vent at reasonable intervals. The tenants accepted the unit as is on the move-in so they are responsible for cleaning around the dryer. There is no evidence regarding the condition of the interior of the venting hose or the exterior vent. No order with respect to the dryer hose or vent will be made.

Hornet Nest

In an e-mail dated August 27 the tenants reported to the landlord that “we’ve suffered multiple bee stings while walking from the front door to the driveway: there’s a nest somewhere and it isn’t safe to approach the front door . . .Hopefully the mailman doesn’t get attacked! Anyways, it’s not safe at the front entrance, can you get this dealt with?” The tenants mentioned the nest again in an e-mail dated September 29.

There was no request for action and no other correspondence about the nest until October 20 when Canada Post suspended mail delivery because of the hornet nest. The landlord and the tenants both testified that the problem was resolved within a couple of days. The landlord testified that he did not realize how serious the situation was until the postal service was suspended.

There was some confusion with Canada Post that resulted in an interruption of mail service for the tenants but they testified that while the interruption was a nuisance, they do not appear to have suffered a loss.

Although the tenants claims $460.00 as compensation for the interruption of mail service in light of their own testimony that no loss was suffered, other than some inconvenience and irritation, no monetary award will be made for this item.

Movers

On this application the tenants claimed that the movers had to work for an estimated hour and a half longer because they could not use the front door to unload. They testified that the movers were there for about four hours and that they have a lot of stuff.

Not only is the tenants’ claim just a guesstimate – without any specificity – it would have carried greater credibility if it had been mentioned before this application for dispute resolution was issued.

I find that the tenants have not met the required standard of proof – on a balance of probabilities – for this item and this claim is dismissed.

Garbage Left by Previous Tenants

The landlord had to obtain and enforce an order of possession against the previous tenants. He testified that for some time after they kept coming back and living in the carport. Those tenants left a large quantity of stuff behind.

The tenant filed a photograph dated July 23, 2016, obtained by an FOI request to the local municipality, of the contents of the home piled by the street. They also filed a photograph of some items left in the shed and on the lawn. The landlord filed an invoice in the amount of $680.00 for rubbish removal dated July 28. The landlord testified that by the tenants moved in there was nothing left in the house or in the yard but there were some things on the city boulevard.

The tenants testified that when they moved in the proper garbage bins were not at the rental unit and there were tents, sleeping bags, rugs and clothing left along the street. The tenants contact the municipality who eventually provided the proper garbage bins. The male tenant testified that he and the neighbour picked up this garbage and put it into the garbage bins, which were hauled away by the municipality as part of the regular pick-up program. The male tenant testified that he and the neighbour spent about a half hour on this task and it was very unpleasant because he did not want to touch the stuff.

The tenants claim $50.00 for the clean-up; $50.00 for arranging their own binds; and $160.00 for having to look at the garbage for eight days.

The tenants' claims are exorbitant; the equivalent of $100.00/hour to clean up some garbage and make a telephone call. This claim is dismissed.

Keys

The tenants' written submission is that they received four keys: one for each of the front and back door dead bolts and one for the door knob locks. They want a second key for the front door dead bolt and $3.00 for the copy they made.

The landlord testified that the tenants received a full set of keys and that he made sure all the keys worked before he left the unit on the handover date. In his written submission he stated that the tenants received two front door keys and two back door keys, and that they were the original keys for the new locks installed on July 22, 2015.

The legislation required the landlord to give a tenant a key for every lock; not a set for every occupant. The evidence is that the tenants received a key for all of the door locks. This claim is dismissed.

Stove Paint Chip Repairs

The tenants claim $8.65 for paint purchased to repair two paint chips on the stove top. The tenants accepted the unit "as is". This claim is dismissed.

Toilet Seat

The tenant complains of a small brown streak on the inside of the toilet seat lid. They say they have used numerous cleaners but have been unable to remove it. They refer to it as a “poo” stain and ask for a new toilet seat.

If this mark was organic, ordinary household cleaners would have removed it. This claim is dismissed.

Filing Fee

As the tenants substantially successful on this application they are entitled to reimbursement from the landlord of the $50.00 fee they paid to file it.

Conclusion

For the reasons set out above:

a. The 10 Day Notice to End Tenancy for Non-Payment of Rent dated January 4, 2016 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the *Residential Tenancy Act.*
b. Two repairs orders have been made.
c. The tenants are awarded a monetary award in the total amount of $730.00. $292.70 has already been withheld from the rent leaving a balance owed to the tenants in the amount of $437.30. Pursuant to section 72 this amount may be deducted from the next rent payment due to the landlord.
d. All claims made by the tenants are dismissed.

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: April 15, 2016

Residential Tenancy Branch