



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes FF, LRE, MNDC, O, OLC, RP

### Introduction

This hearing dealt the tenant's application to resolve a number of issues related to repairs and the relationship between the tenants and the landlords.

### Issues(s) to be Decided

The issues to be decided include whether the tenants and/or landlords are meeting their obligations under Section 32 the *Residential Tenancy Act (Act)* relating to repair and maintenance of the rental unit and whether the landlord has breached Section 29 of the *Act* (landlords right to enter rental unit).

As well, it must be decided if the tenant is entitled to an Order that requires the landlord to complete repairs; to a Monetary Order for compensation for loss or damages due to a breach of Section 32; and to recover the filing fee and costs from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 32, and 72 of the *Act*.

### Preliminary Issues

Throughout the landlords' evidence and during the hearing the landlords referred to the male occupant of the rental unit as "the tenant's agent" since he was never added onto the tenancy agreement. The male occupant testified that he has been living there since the start of the tenancy.

As well, evidence provided by the landlords includes a handwritten note from the male occupant thanking the landlords for "bringing peace and quiet back into our lives again" (Page 7 of landlords' evidence) and a letter from the landlords addressed to both occupants of the rental unit dated August 11, 2009 (Page 31 of landlords' evidence).

Based on the long term relationship between the landlords (previous and present) and the male occupant and the correspondence submitted I find that, in fact, the landlords have accepted the male occupant as a tenant by their actions.

In addition, on Thursday, October 1, 2009 I received correspondence from the applicant in regards to statements made by the landlord during the hearing. I have not read this material nor relied upon it in this decision as per Section 14.1 of the Residential Tenancy Branch Rules of Procedure.

## Background and Evidence

Both parties provided substantial documentary evidence packages.

The tenant submitted:

- Tenancy agreement signed May 5, 2002 by the female tenant and previous landlord for a month to month tenancy that began on June 1, 2002 with rent of \$850.00 payable on the first of each month and security deposit of \$425.00 paid on May 5, 2002. Current rent is \$916.00 per month;
- Copies of correspondence from the tenant to the landlord dated November 27, 2007; December 1, 2008; December 2, 2008; December 15, 2008; December 26, 2008, June 26, 2009; July 30, 2009, August 28, 2009; and September 6, 2009; and
- 25 Photographs dating from December 21, 2008, December 24, 2008, June 9, 2009 and August 14, 2009 showing garbage receptacle and parking area, holes in the ceiling of the hallway, the front door of the building, kitchen faucet, peeling and discoloured paint in the bathroom, living room and bedroom.

The landlord submitted:

- A summary of the history of the relationship with the tenants prior to these issues and previous landlord documentation;
- A summary of responses to the tenants' letters, including a synopsis of these issues and a description of the landlord's response;
- A copy of the same tenancy agreement as submitted by the tenant;
- A copy of the rental unit move in inspection signed by the previous landlord and the female tenant and a follow up letter from the female tenant and signed by the previous landlord of additional items noted at move in.
- Correspondence from the tenants to the landlords (the same as submitted by the tenant, excluding letters dated December 26, 2008 and June 26, 2008);
- Correspondence from the landlords to the tenants and all tenants in building;
- Receipts for heating services, fire alarm servicing, repairs to the intercom system
- 7 photographs taken on December 15, 2008 of the bathroom walls and ceiling, heat lamp and the kitchen faucet and wall.

An initial issue to be dealt with was the tenant's application to suspend or set conditions on the landlord's right to enter the rental unit. The tenant clarified that he had not felt the landlord had entered inappropriately only that they wanted to ensure that the landlord would be respectful when entering the rental unit and remove footwear.

The tenant testified the reason for his application, in part, was to ensure that the landlord was fulfilling his responsibility as outlined in Part 6 of the tenancy agreement. This section is consistent with the landlord and tenant obligations to repair and maintain as outlined in Section 32 of the *Act*.

In the documentary evidence provided by the tenant and in his testimony, he referred to both tenants mentioning issues to the landlords when they met them in the hall or informally. It was not until they felt the issues were not being addressed that they started to submit letters to the landlord.

The tenant also asserts that the landlords have not responded to any of the issues identified. The tenant confirmed that the living room and master bedroom were last painted in May 2002 but he does not know when the rest of the unit was last painted prior to the onset of the tenancy.

The tenants have also indicated in their application that the landlord has not been reachable at times when there are emergencies. The landlord testified that tenants have both their landline and cell phone numbers.

The landlord acknowledged receiving all but two of the letters that the tenants had submitted into evidence. The two letters in question do not raise any particular new item that would require repair or maintenance.

From all of the correspondence the following items were identified:

1. Intercom not working;
2. A couple of light switches not working properly;
3. An electric outlet not working;
4. Mold in the living room and bathroom;
5. Colour mismatch in the bathroom between the wall and the ceiling;
6. Heat lamp in bathroom not working;
7. Plaster cracks by the windows in the bedroom and living room;
8. Caulking in the bathroom – around tub;
9. Selector lever near bath tub;
10. Outside light;
11. Temperature issues in the fall and winter; and
12. Kitchen faucet.

Both parties agreed that issues 1, 6, and 10 were either resolved or not being pursued through this hearing.

In relation to Issue # 11 the landlords conceded that there have been problems with the heating system in the building but that they have addressed them in a timely manner

and have submitted into evidence receipts from a heating service for work completed on the heating system in September, 2007 and August, 2009.

As to the other matters, the landlords' documentary evidence and testimony was that they had inspected the items identified by the tenants and determined that no work was required at the time requested. The landlord contends that they informed the tenants of their decisions mostly in a meeting on December 17, 2009.

When discussing the photographic evidence the landlord pointed out the photographs taken by the landlord were taken in December, 2008 and the ones from the tenants date from December, 2008 to August 2009 and they have not been in the rental unit since December and were not able to comment on the current conditions as identified in the tenants' photographs.

## Analysis

Section 32 of the Act requires a landlord to provide and maintain a residential property in a stated that complies with 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.

In relation to the heating problems identified by the tenants there was insufficient evidence to show that the landlords were not dealing heating problems or intentionally keeping the heat low to reduce their costs, as suggested in the tenants' documentary evidence.

I am convinced, by the evidence and the testimony, that the landlord did address the issues identified by the tenants by assessing the need for any repairs or maintenance. However, having found that, I also note that the Residential Tenancy Policy Guidelines state that a landlord is responsible for painting a rental unit at reasonable intervals.

The Policy Guidelines go further to say that the useful life of an interior paint finish is 4 years. Based on the tenant's testimony it has been at least 7 years since any part of the rental unit has been painted and there was no substantive evidence of damage caused by the tenants. Items 4, 5, 7, and 8 would be dealt with when preparing the rooms for painting.

No evidence was submitted to corroborate the condition of the selector lever in the bathtub. Based on the photographic evidence submitted from the tenant I find the kitchen faucet requires replacement.



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I am satisfied that the landlords did inspect the electrical problems identified by the tenants but I am not convinced the landlords have the expertise to assess the problems adequately.

Section 33 requires that contact information for emergency repairs be posted and maintained in a conspicuous place on the residential property or given to tenants in writing. While I am satisfied that the landlords have provided phone numbers for emergency contact to the tenants, I am not convinced that the numbers are provided in written format for all tenants to access.

Since many of these issues had been identified earlier on in the tenancy, prior to the current landlords' ownership of the property, and the landlord did assess the issues identified by the tenants I am not convinced the tenants are entitled to any compensation or reduction in rent.

However, as the tenants were mostly successful for the majority of their application I find that the landlord should reimburse the tenant for the fee for the Application for Dispute Resolution but not for the costs of production of the tenants' evidence.

The Tenants have established a total monetary claim in the amount of \$50.00. Pursuant to Section 72(2) (a) of the Act, the Tenants may deduct this amount from future rent due to the Landlord.

## Conclusion

Based on the above I order the landlords to complete the repairs within 3 months as follows:

1. Have the electrical problems assessed and repaired by a licensed electrician;
2. Have the entire rental unit prepared for and painted;
3. Replace the kitchen faucet
4. Provide each tenant in the property with written emergency contact information;

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: October 1, 2009.

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Dispute Resolution Officer