



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: MNDC, OLC, RP, FF

### Introduction

This hearing dealt with the tenant's application for a Monetary Order for compensation for damage or loss under the Act; Orders for the landlord to comply with the Act, regulation or tenancy agreement, and make repairs to the rental unit. The tenant was also seeking to recover the filing fee paid for this application. Both parties were represented at the hearing and had an opportunity to be heard.

### Issue(s) to be Decided

1. Whether the landlord has violated the *Residential Tenancy Act* (the Act), the Residential Tenancy Regulation (the regulation) or the tenancy agreement.
2. Whether the tenant has incurred loss or damages as a result of the landlord's violation, if any.
3. Repairs required to the rental unit, if any.
3. Award of the filing fee.

### Background and Evidence

Upon evidence before me, I find that the tenancy commenced approximately 3 years ago. The tenant pays monthly rent of \$620.00. The rental unit has a balcony that is shared with another unit but the balconies are separated by a metal partition. There is an approximate 3 inch gap below the partition that permits water to drain. The sliding glass door leading to the tenant's balcony is the only opening window the tenant has for fresh air.

The neighboring tenant that shares the balcony obtained a dog in April 2008. The dog has been allowed to relieve itself on the patio. As a result, water contaminated with dog feces and urine accumulated and dried on the tenant's balcony causing a foul smell and the attraction of flies.

The tenant claims that he was unable to open the sliding glass door or use his balcony due to the smell and flies. The tenant normally uses the balcony for gardening and entertaining in the warmer months but has been unable to do so this year. The tenant places a value of \$100.00 per month on having the balcony available for his use. The tenant notified the landlord of the situation in April and continued to complain on a regular basis, about once per month.

The landlord testified that the tenant did notify the landlord of the feces on his balcony in April 2008 and the landlord stated that the neighboring tenant was given verbal warnings to clean up the dog feces followed by written warnings. The landlord provided evidence that two written warnings were made in July 2008. The landlord filed for dispute resolution against the other tenant; however, the tenant has been allowed to remain in the rental unit but must keep the balcony clean of dog feces.

During the hearing, the parties agreed that the other tenant has been doing a better job at cleaning up after the dog but that the accumulated feces and urine from months prior remains on the tenant's balcony. The tenant requested that the landlord pressure wash and re-paint the balcony. The landlord agreed to perform these tasks as soon as possible.

### Analysis

I accepted the agreement the parties reached concerning pressure washing and painting the balcony as an acceptable solution to removing the existing foul smell from

the tenant's balcony. Therefore, I ORDER the landlord to ensure that the tenant's balcony is pressure washed and painted on or before September 30, 2008.

As for the tenant's claim for compensation, in order for a claim to succeed, the person making the claim has the onus to prove:

1. that the other party violated the Act, regulation or tenancy agreement,
2. that the violation caused the party making the claim to suffer a loss or damages, and
3. the quantum of the loss or damage suffered.

I am satisfied that the tenant suffered the loss of quiet enjoyment of his balcony and was not able to open the window for fresh air. In determining whether this loss was a result of the landlord's violation of the Act I referred to Residential Tenancy Policy Guideline 6. *Right to Quiet Enjoyment* which provides, in part,

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

I am satisfied that the landlord knew of the problem the tenant was experiencing. Providing verbal and written warnings and making application for dispute resolution are all reasonable steps a landlord may take to address the issue with the other tenant. However, I find that the landlord failed to take action in or escalate the action quickly enough. In making this determination, I noted that the first written warning was issued July 17, 2008 even though the landlord first became aware of the issue in April 2008. Giving the landlord time to respond to the tenant's complaints, I find that the landlord failed to take sufficiently reasonable steps starting in mid-May 2008.

The Residential Tenancy Policy Guideline also provides, in part,

In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

Considering that the patio door is the only opening window for the rental unit and that the dog feces had contaminated the balcony in the warmer months, when the tenant would most likely enjoy the benefit of the balcony, I accept the tenant's submission that his balcony had a value of \$100.00 per month.

In light of the above findings, I award the tenant \$400.00 for loss of use of his balcony from mid-May until mid-September 2008. As the tenant was successful with this application, I also award the tenant the filing fee paid for this application. The tenant is awarded a total amount of \$450.00. The tenant may reduce a subsequent month's rent in satisfaction of this award.

If the landlord fails to perform the pressure washing or painting by September 30, 2008 or the landlord fails to enforce compliance upon the other tenant to keep the balcony clear of dog feces and urine, the tenant is at liberty to make another application for dispute resolution.

#### Conclusion

The tenant is awarded \$450.00 for loss of quiet enjoyment of part of his rental unit and recovery of the filing fee.

September 19, 2008

---

Date of Decision