



# Dispute Resolution Services

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

## **DECISION**

**Dispute Codes:** FF, LAT, MNDC, RR

### **Introduction**

This matter dealt with an application by the tenant for various monetary orders related to a reduction of services, access to parts of the property and repairs to the rental unit. The tenant also seeks compensation for loss of quiet enjoyment of the property due to noise caused by renovation of the lower suite in the house.

Both the landlord and the tenant were present at the hearing which was held via teleconference and were afforded an opportunity to present evidence. I also advised both parties that I would be considering their written submissions which had been received prior to the hearing as well as their evidence at the hearing, in reaching my decision.

### **Issue(s) to be Decided**

Is the tenant entitled to monetary compensation for the claims she has submitted, and if so, in what amount?

### **Background and Evidence**

This tenancy commenced in June 2006 and concerns a rental unit which is the upper level of a home with a yard. The property also has an attached garage.

The tenant's claim is as follows:

- compensation of \$5600.00 for the lack of a door between two areas of the home

- compensation of \$2800.00 for the lack of a lock on the garage door
- repairs not done to floor near hot water heater, compensation \$600.00
- \$500.00 rent reduction due to loss of use of the backyard and loss of quiet enjoyment due to noise
- loss of use of backyard due to construction debris and landlords notice, \$200.00

The tenant gave evidence that when she moved into the property that the landlord made a verbal promise to install a door between the two suites. The tenant states that the issue arose again this year when the landlord stated that she would install the door, but has not done so.

The landlord's evidence is that there was never a promise to install a door and that in September this year she explored the idea but was advised the installation of the door would require major work.

The tenant has requested compensation for no lock on the garage door and alleges that the landlord has entered the garage and disturbed items of hers that are stored there. The tenant has not provided any evidence that she has made this request to the landlord previously and requests \$2800.00 as compensation and an order that a lock be installed. The tenant has indicated that she has had use of the garage for the past 2 years and that the landlord has not advised her she could not use the area.

The landlord's evidence is that the garage is not considered part of the tenancy and is indeed a common area. The landlord states that access is required to the garage as that is where the breaker panel for the electric service is located for both rental units.

The tenant has requested compensation for the lack of flooring located near the hot water tank. The tank was replaced last year after a leak which also caused damage to the floor. The vinyl has been peeled back with rough edges exposed and continues to peel, which makes it unsightly and difficult to clean.

The landlord's evidence is that she was advised not to place new flooring back near the hot water tank and has not done so based upon that advice but at the hearing she

agrees that the floor edging will be trimmed and an edge placed so further peeling will not occur.

The tenant seeks a rent reduction and compensation for loss of quiet enjoyment related to noise resulting in cleaning and repairs being made to the lower level suite. The tenant alleges that the work was carried out over a period of a month and on some occasions late into the evening and on weekends. The tenant alleges these also constituted a violation of the city by-laws in regards to when the work was carried out. The tenant also claims that construction debris was left in the back yard creating a hazard for her child on several occasions. The tenant also claims compensation for the landlord advising her, in writing, that she was no longer allowed to use the back lawn of the property for the enjoyment of her and her daughter. The tenant claims that she has had use of the lawn since the start of the tenancy and it has only recently become an issue for the landlord.

The landlord's evidence in her written submissions is that the use of the lawn was never in the tenancy agreement and was never allowed by the tenant. The landlord's oral evidence at the hearing is that only meant that the tenant's dog was not allowed on the lawn.

The landlord's evidence regarding the noise from the renovations is that it was due to necessary repairs on the lower suite and that with the exception of one night that the repairs did not run late. The landlord also states that all garbage and debris was taken away within three days of being placed on the lawn.

### **Analysis**

I have reviewed the evidence and in many instances the claims are based upon oral promises that have never been documented or followed up. I find that the tenant can not rely upon several year old alleged broken promises to now seek significant compensation. The tenant's claim in relation to the lack of a door is severely stale dated

and she has not proven that it was ever indeed promised. I can not find that it is an issue that has been proven or that is worthy of compensation.

In regards to the garage, the landlord's assertion is that it is common property and should not be locked. The tenant has had the use of the garage for several years with the full knowledge of the landlord and I find that there is implied consent that it may be used for storage. I do not however find that it is a matter for which the tenant may be compensated. There is no evidence before me that the tenant has made such a request in writing to the landlord and allowed that request to be considered.

I find that although the tenant has had use of the garage, that it is indeed a common storage area intended for both suites. The landlord should be making that area available and ensuring that there is a secure lock on the door. The landlord has submitted that it is necessary to access the area for the electrical panel and as such I find that a lock must be installed and that each of the tenants and the landlord may retain a key. The landlord must exercise entry into that area only for emergencies which require that access, and respect the privacy of the tenant's belongings stored there.

I have considered the evidence in regards to the tenant's claim for loss of quiet enjoyment due to the repairs to the lower suite which occurred over a period of about thirty days on an intermittent basis. The nature of the noise created varied from late night tile cutting to noisy cleaning by the landlord and her family. The tenant also makes a case for some loss of quiet enjoyment due to construction debris and garbage and paint use on the back lawn. The counsel for the landlord makes a case that the nature of the repairs were of a necessary nature due to damage to the lower suite and as such the landlord can not be held liable for the noise or disruption created.

The landlord has an obligation to carry out the repairs in a manner that offers as little disruption to the tenant's right to quiet enjoyment as possible. The tenant is usually away from the property during the day at work, and as such the landlord had an opportune time to carry out the work. If the landlord elects due to their own schedule to carry out the work on weekends or in the evening, they indeed run a higher risk of causing noise that may disturb the tenant. I find that the tenant has suffered some

degree of loss of quiet enjoyment due to the noise and disruption caused by the repairs to the lower suite.

The tenant also seeks to be compensated for the loss of the use of the lawn area of the property. The tenant was notified in writing by the landlord on September 4, 2008 and again on September 8, 2008 that she was not to have use of the lawn. The landlord has alleged that her intention was only to limit access to the lawn by the tenant's dog and that the letters sent were inaccurate due to her lack of language skills. I have read the letters and find that their intention is very clear and not subject to being misunderstood. The landlord made it very clear that she was notifying the tenant that she was to cease her use of the lawn. The use of the lawn by the tenant had been allowed for over two years and I interpret the landlord's action to be of a retaliatory nature due to other conflicts. I find that the tenant is entitled to be compensated for the lack of the use of the lawn and that the tenant's right of access and use of the lawn be restored.

### **Conclusion**

In summary I dismiss the tenant's claims for compensation in regards to the installation of the door and the lack of a lock on the garage door.

I order that the tenant be compensated as follows:

Failure to Repair Flooring	\$ 50.00
Loss Of Quiet Enjoyment-Repairs	\$100.00
Loss of use of Lawn (two months)	\$200.00
Filing fee for the cost of this Application	\$ 50.00
<b>Total</b>	<b>\$400.00</b>

I order that the tenant is entitled to be compensated in the amount of \$400.00 and order that the tenant may deduct that amount from their next monthly rent payment.

Dated: October 17, 2008