

# Dispute Resolution Services

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

## Decision

Dispute Codes: MNDC, FF

## Introduction

This hearing dealt with an application by the tenant for a monetary order and a cross-application by the landlord for a monetary order. Both parties participated in the conference call hearing and had opportunity to be heard.

## Issue(s) to be Decided

Are the parties entitled to monetary orders as requested?

## Background and Evidence

The parties agreed that the tenancy began on May 1, 2008 and was set for a fixed term to end on April 30, 2009. Monthly rent was set at \$1,375.00 per month. The tenancy ended on August 31, 2008. The rental unit is on the upper floor of a home and the tenant had use of a back yard. The tenant testified that the reason he rented the home was so his son would have a yard in which to play. The tenant provided photographs of a large, inflatable pool which was used by his son and other children in the neighbourhood. The tenant testified that when he moved into the rental unit, he noted that the unit required painting. He offered to paint the rental unit in exchange for a rent reduction and testified that the landlord responded by saying, "We'll work on it." The tenant did paint the rental unit and the landlord reimbursed him for the cost of paint. The tenant testified that when he moved into the rental unit the patio was filthy and covered with debris and that he cleaned the patio a number of times. The tenant testified that on or about August 5, the landlord began repairing the perimeter drains, which meant the back yard had to be excavated, causing him to lose the use of the back yard. The tenant seeks \$1,000.00 in compensation for loss of use of the back yard and a further \$1,000.00 in compensation for his labour in painting the rental unit and cleaning the patio.

The landlord testified that although he agreed to pay for paint, there was never an agreement that the tenant would be paid for labour. The landlord further testified that at the outset of the tenancy he advised the tenant that at some point, the perimeter drains would require repair and that he gave notice to the tenant that repair would be commencing and the tenant agreed. The landlord testified that the work on the drains was done on August 20-21 and that the tenant had full use of the back yard until then.

The landlord made a claim for the cost of multiple trips to the rental unit to conduct a move-out inspection, painting supplies which he claims the tenant failed to return, cleaning the deck at the end of the tenancy, removing dog feces, dishwasher repair and dump fees.

### Analysis

The tenant bears the burden of proving his claim on the balance of probabilities. I find that the tenant has not proven that he and the landlord entered into an agreement that he would be paid for his labour. If no agreement exists, the landlord cannot be held liable for the value of the labour and I find the claim must be denied.

I further find that the tenant has failed to prove that he was deprived of use of the backyard from August 5. The tenant has provided no corroborating evidence to show the length of the deprivation and as the landlord disputes the tenant's claim that the work began on the 5<sup>th</sup>, I am unable to find that it began earlier than the 20<sup>th</sup> and accordingly find that the tenant lost use of the backyard for no more than 11 days. While the tenant was entitled to use the back yard, it is necessary to balance the tenant's rights with the landlord's right and responsibility to maintain the premises. I find that the loss of use of the backyard for 11 days constituted a temporary inconvenience and find that the inconvenience was not sufficient to attract compensation. The tenant's claim is denied.

As for the landlord's claim, a previous dispute resolution hearing was held on November 7, 2008 to address a claim by the landlord for loss and damages and an award was made against the tenant. The landlord could have brought this claim at that time as all of the elements of this claim were present at the time the previous claim was made, but he chose not to do so. There exists under the law a general rule prohibiting litigants

from splitting one homogenous claim into two quantitative parts when damages are recoverable on a single cause of action. I find that the rule against claim-splitting acts as a bar to the landlord's claim and the claim is denied.

### Conclusion

The claims of both the tenant and the landlord are dismissed. Each party will bear the cost of his own filing fees.

Dated April 16, 2009.