

# Dispute Resolution Services

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

## Decision

Dispute Codes: CNC, MNDC, OLC, RR, FF

## Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy, a monetary order, an order that the landlord comply with the Act and an order that the tenant be permitted to reduce rent. Both parties participated in the conference call hearing and had opportunity to be heard.

At the outset of the hearing the tenant advised that she would be vacating the rental unit on July 31. The parties agreed that the tenancy would end on July 31 and it was therefore unnecessary to address the claim to set aside the notice to end tenancy. I consider that claim to have been withdrawn as the issue has been resolved by consent.

At the hearing the tenant advised that although she applied for an order permitting her to reduce her rent, this was not the relief she was seeking. I therefore consider that claim to have been withdrawn.

## Issue(s) to be Decided

Is the tenant entitled to a monetary order as claimed?

Should the landlord be ordered to comply with the Act?

## Background and Evidence

The tenancy began early in 2007. The rental unit is a single-family home located on a property on which a second home is also situated. The second home may only be accessed via a walkway beside the rental unit (the "Walkway"). The tenant testified that the landlord has repeatedly accessed the yard area of the home, including the Walkway, without having given 24 hours notice of entry and seeks an order that the landlord comply with the Act. The landlord took the position that notice of entry was not required to access the yard or Walkway.

The tenant testified that two windows on the rental unit are rotting and the windows cannot be closed, causing heat loss. The tenant seeks compensation for the heat loss she has experienced. The landlords testified that the windows in question are on an enclosed porch area which has never been heated.

The tenant testified that at the start of the tenancy she was renting one of the bedrooms to another party, J.M., whose name appears on the tenancy agreement. The tenant testified that she had at least two other students rent the bedroom during the first year of the tenancy and that the landlord was aware that the students were staying in the rental unit and had met them. The tenant claimed that the landlord had promised to install carpets in the bedroom and that the landlord's failure to do so caused her to lose rental income from August 2008 to present. The tenant seeks a monetary order compensating her for lost income during that time period. The landlords testified that they were aware that J.M. was living in the rental unit, but were unaware that the tenant had sublet to other students.

The tenant testified that the landlord had repaired a fence in the backyard and beside the walkway which caused her to lose the use of the backyard and disturbed her. The tenant seeks compensation for loss of use of the yard and loss of quiet enjoyment.

The tenant testified that there was an ongoing problem with an upstairs bathroom which required her to repair a leak on several occasions. The tenant seeks compensation for the time spent on repairs. The tenant acknowledged that she did not advise the landlords of the problem.

### Analysis

The Act has specific provisions respecting a landlord's right to enter a rental unit. However, there is no requirement under the Act for landlords to provide notice when accessing the residential property, or the outside area of the rental unit. It is clear that the Walkway is a common area and therefore no notice of entry would be required. As for the rest of the yard, I find that this is not part of the rental unit, but part of the residential property and therefore is not subject to the requirements of the Act respecting notices of entry. Accordingly I find that the landlords have not violated the

Act and I decline to order the landlords to comply with the Act.

As for the tenant's monetary claim, I find that the windows which are the subject of the tenant's complaint are in an unheated area and therefore no heat loss can be attributed to them. I dismiss the claim for compensation for heat loss.

I find that the tenant did not have the landlords' permission to sublet the rental unit. The tenancy agreement specifically names J.M. as a tenant and states that if a change of tenants were to occur, the tenant was obligated to advise the landlords. I find that the tenant failed to do so. Although the landlords may met some of the students living in the house, I find no reason why the landlords should have known these students were subletting a room rather than assuming that they were the tenant's houseguests. As the tenant did not have permission to sublet the bedroom, I find that her claim for loss of income must fail and I dismiss the claim.

The tenant's right to quiet enjoyment and full use of the property must be balanced with the landlords' obligation to repair and maintain the rental unit and residential property. I find that the loss of use of parts of the backyard, and I am not persuaded that the tenant lost use of all of the backyard as she has claimed, is not so significant as to attract compensation. I dismiss the tenant's claim.

The landlords have an obligation to make repairs in a timely manner. However, the landlords cannot be expected to make repairs when the tenant does not advise them that repairs are required. I find that the landlords were unaware that repairs were required and accordingly I dismiss the tenant's claim.

### Conclusion

The tenant's claim is dismissed in its entirety. The tenant will bear the cost of the filing fee paid to bring this application.

Dated July 14, 2009.

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