



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **INTERIM DECISION**

**Dispute Codes**      MNDC

### **Introduction**

This is the Tenants' application for compensation for damage or loss under the Act, regulation or tenancy agreement.

I reviewed the evidence provided by the parties prior to the Hearing. The parties had an opportunity to be heard and respond to the other party's submissions. Both parties gave affirmed testimony and the Hearing proceeded on its merits.

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

Are the Tenants entitled to a monetary order in compensation for:

- loss of parking;
- the Landlords failing to provide access to the shed and the greenhouse;
- their labour in cleaning the rental unit upon taking possession; and
- loss of quiet enjoyment?

### **Background and Evidence**

The parties agreed on the following facts:

- The parties entered into a tenancy agreement dated June 20, 2008. The Tenancy started on July 1, 2008.
- Rent is \$1395 per month payable on the 1<sup>st</sup> of the month. The Tenants paid a security deposit in the amount of \$700 on June 20, 2008.

- The Landlords' agent agreed to allow the Tenants to move in on June 21, 2008, without paying prorated rent, on the condition that they painted the rental unit.
- There was no formal Condition Inspection Report done when the Tenants moved in to the rental unit.

The Tenants gave the following testimony:

- The Tenants were supposed to have access to a shed and greenhouse which was located on the rental property, but the Landlords' agent has refused them access without paying an additional \$250.00 per month for the use of the shed and \$150.00 for the greenhouse.
- The tenancy agreement does not stipulate that the shed and greenhouse are specifically included in the rent, but the Landlords' agent knew that the Tenants wanted to include these outbuildings in the tenancy agreement. The Tenants asked the Landlords' agent to handwrite the shed and greenhouse on the tenancy agreement, but she declined to do so. The Tenants signed the agreement anyway because they believed they had a verbal agreement.
- The Tenants do not have parking on the street-side of the rental property, contrary to what they were promised by the Landlords' agent when they signed the tenancy agreement.
- When the Tenants viewed the rental unit with the Landlords' agent, it was very dark. In the light of day and with more time to inspect the rental unit, they discovered that the rental unit was filthy and in very poor condition. Of particular concern was mildew and mould in the bathroom; the lack of working electrical outlets; and the noisy furnace. The Tenants took photographs of the rental unit on July 2, 2008, copies of which were provided into evidence.
- The Tenants requested the Landlords' agent to do another walk-through in order to identify and fix the problems, but the Landlords' agent refused and hung up on them.

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- As a result of the problems the Tenants were having with the furnace, they investigated and discovered a very dirty furnace filter and requested that the Landlords replace it.
- The Landlords' agent did not replace the filter for more than 2 ½ months.
- The Tenants provided the Landlords' agent with a list of deficiencies, but nothing has been done to remedy the situation, except for providing the Tenants with a cheap furnace filter, meant to last a month. There has been no further replacement filter provided to the Tenants.
- The Tenants bought 5 gallons of paint and started painting three days after taking possession of the rental unit. The Landlords' agent also provided 5 gallons of paint. The Tenants have completed the painting.
- Some electrical outlets work only intermittently. The Tenants are concerned about their safety due to the electrical wiring and the state of the furnace.
- The Landlords' agent is intimidating the Tenants, saying that she may be moving back in to the rental unit.
- The lock on the entry door was broken and the Tenants replaced it. The Tenants have attempted to provide the Landlords' agent with a key, but she did not come and pick it up.

The Landlord's agent gave the following testimony:

- The Landlords' agent told the Tenants that she would consider allowing the Tenants to have access to the shed and the greenhouse. The Landlords' agent did not agree to include the use of the outbuildings in the rent.
- The greenhouse is meant to over-winter plants and is not to be used for storage.
- The Landlords' agent used to own the property and lived in the Tenant's rental unit for 29 years prior to the Tenants moving in. Prior to living in there, the Landlords' agent lived in another rental unit in the same complex for 10 years.

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- The Landlords' agent sold the rental property in January, 2008, to the current Landlords. Prior to selling the property, she had a new roof installed on the property; new porches built; new railings on the patios; and installed new carpet in two of the rental units. The Tenant's rental unit did not receive new carpeting.
- The Tenant's suite was neglected more than the others because she did not have sufficient money to renovate it. One of the reasons she chose the Tenants was because they said they wanted to renovate the rental unit.
- The walls in the Tenant's rental unit were painted 5 years ago, except for two of the bedrooms. The Landlords' agent was not sure when those two rooms were last painted.
- The Landlords' agent had spackled the wall adjacent to the bathtub prior to the Tenants moving in. The Tenants chipped it away before taking the pictures as it wasn't like that when the Tenants took possession of the rental unit. The damage is cosmetic only as there is no water damage in the bathroom, as alleged by the Tenants.
- The Tenants have parking for two vehicles. Their parking spaces are gated and fenced and therefore more secure than the other tenants' parking spaces in the complex.
- The Tenants allege that the Landlords' agent is giving other tenants preferential treatment by giving them new window coverings. This is not true. The window coverings in question were left by previous tenants and the Landlords' agent just left them there.
- The Landlords' agent did not have, and currently does not have, any plans to move back into the rental unit.
- The Tenants changed the locks on the rental unit and have not provided the Landlords with a copy of the key.
- The Landlords' agent is not required to bring the rental unit to today's standards with respect to the electrical wiring and cosmetics of the rental unit.

## **Analysis**

The Landlords must be provided a key to the Tenants' residence. The Tenants agreed to provide a key to the Landlords' agent through the rent cheque drop off box by the end of the day, September 1, 2009.

The Landlords' agent's behaviour towards the Tenants during the Hearing was derogatory and sarcastic. Documentary evidence provided by the Tenants shows that the Landlords' agent, on a couple of occasions, alluded to the fact that she might be moving back into the rental unit. The Landlords' agent testified that she did not have, and currently does not have, any intention to move back into the rental unit and I find it likely that these statements were made solely for the purpose of intimidating the Tenants.

The tenancy agreement does not include the shed or the greenhouse. The Tenants have been supplied with parking. Section 1, paragraph 2 of the tenancy agreement states: "Any change or addition to this tenancy agreement must be agreed to in writing and initialled by both the landlord and the tenant. If a change is not agreed to in writing, is not initialled by both the landlord and the tenant or is unconscionable, it is not enforceable." Therefore, I dismiss the Tenants' application for compensation with respect to those items.

The Tenants provided 72 photographs depicting the condition of the rental unit when they moved in. This evidence corroborates the Tenants' allegations. These photographs show:

- that the rental unit was generally in disrepair;

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- there is broken cabinetry, water damage, mould and mildew in the bathroom;
- the carpets were dirty, with stains and burn marks;
- the furnace filter and duct work was filthy;
- the interior walls, windowsills and ceilings were filthy and tobacco stained;
- a door frame is damaged; and
- the thermostat is held together with tape.

Section 32 (1) of the Residential Tenancy Act requires that landlords:

...must provide and maintain residential property in a state of decoration and repair that

- a) complies with the health, safety and housing standards required by law, and
- b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The Residential Tenancy Policy Guidelines interpret Section 32 to mean that the landlord, at the beginning of a tenancy, must provide the tenant with:

1. clean carpets, in a reasonable state of repair,
2. clean windows, in a reasonable state of repair,
3. working light bulbs and fixtures, and

During the tenancy a landlord is responsible for:

1. painting the interior of the rental unit at reasonable intervals.
2. and servicing the furnace including replacing furnace filters, cleaning heating ducts and ceiling vents as necessary.

Section 32 also sets out a tenant's obligations to ensure the rental unit maintains reasonable health, cleanliness and sanitary standards. The guidelines interpret these obligations to include the condition of the rental unit at the end of the tenancy.

Section 23 of the Act also requires the landlord and tenant to inspect the condition of the rental unit on the day the tenant is entitled to possession.

Based on the oral testimony and documentary evidence provided by the parties, I find that the Landlords have failed to comply with Section 32 of the Act. I therefore make the following interim orders upon the Landlord. The Landlords must:

- Comply with Section 32 of the Act; and
- Have the furnace and heating system professionally serviced, repaired and cleaned, including all duct work;
- Have a certified electrician inspect the rental unit to identify issues and repair the electrical system to meet the required electrical standards and codes;
- Have all mould and mildew removed by certified personnel; and
- Have any required repairs to damaged walls, windows, cabinetry, flooring and structure, due to water, mould and mildew, completed by qualified personnel.

The Landlords have until November 15, 2009, to complete all of the above inspections and repairs. This Hearing is adjourned to a later date, and the Notice of Adjourned Hearing is enclosed with this Interim Decision and Orders. When the Hearing resumes, the Tenants and Landlords must report on the work conducted in the interim.

If the Landlords do not comply with these Orders, I shall make an order at the next hearing for rent reduction until the Landlords comply.

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With respect to the Tenants' claim for compensation for cleaning the rental unit, based on the testimony and documentary evidence provided, I find that 40 hours at \$20.00 an hour is a reasonable amount, and I allow this portion of the Tenants' claim in the amount of \$800.00.

With respect to the Tenants' loss of quiet enjoyment, I find that the Landlord's agent, in failing to address the Tenants' concerns about the electrical circuits and furnace, and by attempting to intimidate the Tenants, has caused the Tenants not to reasonably enjoy the rental unit as their home. I find that there was loss of quiet enjoyment resulting from the Landlords breaching Section 32. I find the Tenants are entitled to rent abatement in the amount of \$200.00 per month from July, 2008 to and including August, 2009, in the total amount of \$2,800.00.

The Tenants have established a total monetary claim in the amount of \$3,600.00. Pursuant to Section 72(2)(a) of the Act, the Tenants may deduct this amount from future rent due to the Landlords. Therefore, rent for the months of October and November, 2009, will be nil, and rent for the month of December, 2009, will be \$1,210.00.

## Conclusion

I hereby order that the Tenants are entitled to deduct the amount of \$3,600.00 from future rent due to the Landlords.

This Hearing is adjourned to the date specified in the enclosed Notice of Adjourned Hearing.





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This interim 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: September 03, 2009.

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