

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking money owed under the Act or tenancy agreement, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

### Issues(s) to be Decided

Are the Tenants entitled to the compensation claimed?

### Background and Evidence

This tenancy began in September of 2007. At the outset of the tenancy the parties exchanged emails, including discussions about payment of garbage and water fees over and above the monthly rent, as well as the rental unit having a working hot tub.

The Landlord lives outside of the province and had a realtor act as an Agent to manage the property. The Agent for the Landlord drew up the tenancy agreement.

During the course of the tenancy it came to the attention of the Tenants that garbage and water fees were included in the monthly rent amount. They had been paying these, plus the rent.

The Tenants also had significant problems with the hot tub not working.

The Landlord's Agent provided a letter stating that she made a mistake including the garbage and water fees in the tenancy agreement. The Landlord says the Tenants paid these fees and did not complain, indicating acceptance of the extra costs.

The Landlord raised the rent during the course of the tenancy, but then excluded the use of the hot tub.

The tenancy ended when the Landlord issued the Tenants a two month Notice to End Tenancy, indicating the Landlord intended on moving into the rental unit. The Landlord still lives outside the province and I am informed there is someone else in the rental

unit. Nevertheless, the Tenants will have to make a separate Application for this, and I make no determinations on this issue.

### Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I find that the Landlord has breached the Act. Therefore, I find the Tenants are entitled to the monetary relief sought.

The tenancy agreement is clear that the garbage and water were included in the rent. I apply the parole evidence rule, as the Landlord and Agent may not try and dispute the written tenancy agreement with parole evidence unless the Tenants agree with the parole evidence. They do not.

I also find that the Landlord did not supply the service or facility of the hot tub as contemplated by the parties at the outset of the tenancy. Furthermore, when the Landlord raised the rent and excluded the hot tub, this was a breach of sections 14 and 27 of the Act. The Landlord may not terminate a service or facility without a corresponding reduction in rent. Here the Landlord terminated use of the hot tub and increased the rent.

I find that the Tenants have established a total monetary claim of **\$1,475.29**, comprised of \$700.29 in garbage and water fees, \$725.00 for loss of the hot tub use, and the \$50.00 fee paid by the Tenants for this application.

I grant the Tenants an order under section 67 for the balance due of **\$1,475.29**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

As it appears the Landlord is unfamiliar with the laws pertaining to residential tenancies in this province, I am enclosing a guidebook for future reference.

This 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: December 16, 2009.

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Dispute Resolution Officer