



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issues(s) to be Decided

This was originally a request for a monetary order for \$13,670.30, however the applicants subsequently amended the application lowering the request to \$13,469.61.

The applicants are also requesting that the respondent bear the \$100.00 cost of the filing fee that they paid for their application for dispute resolution.

### Background and Evidence

The applicants are requesting a claim as follows:

1. Back rent for landlords taking over rental space

The applicants claim that:

- When they moved into the rental unit they were told that they had full access to the garage, workshop, and to a storage closet located the laundry area.

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- When the landlords moved in in February of 2009 they parked a vintage vehicle in the garage, completely took over the workshop, and took over a portion of the storage closet in the laundry area.
- The loss of space is equal to about half the total space initially rented and agreed-upon, and therefore they are asking for one half the rent back for the period of time of the landlords denied that space.
- Total amount requested \$1612.00.

The respondent's claim that:

- The only thing the tenants were renting was the rental suite, and the tenancy agreement specifically states that nothing that is not included in the agreement is included.
- They never agreed verbally to include storage space in the rental, however since the tenants seem to need some extra space they accommodated them by allowing them to use some space that was not included in the rental.
- The tenants were not charged for the storage space, nor was it ever officially part of the rental it was only provided as a courtesy.
- The tenants had access to the carport for the full term of the tenancy.

## 2. Refusal to acknowledge and accommodate noise

The applicants claim that:

- The landlord's three-year-old twin boys would make a lot of noise from 5:30 a.m. through until the landlords went to work and then again from when they return home until about 7:30 p.m. when the children went to bed.
- They politely requested that the landlords try to do something to cut down on the noise however the landlords refused to do so.

- They therefore had to endure the noise for the full time that the landlords lived above them and therefore are requesting compensation totaling \$800.00 for having to endure this noise.

The respondent's claim that:

- Their boys at the time were 2 1/2 years old and were no noisier than any other children of their age.
- The boys would get up between 5:20 a.m. and sometimes as late as 7:30 a.m. and were always in bed by 8 p.m..
- This was normal household noise for a family with children, and if the tenants did not want to hear any sound from above they should have moved into a concrete building and not the basement suite of the private residence.
- I have no doubt that the tenants could hear us but we could hear their every day noise as well.
- This noise cannot in any way be considered unreasonable noise.

### 3. Money paid for repair of bathroom plumbing

The applicants claim that:

- The landlords claimed that they caused the sewage backup at the rental property and stated it was caused by a plastic ring.
- At the time they accepted the landlords claim and paid the plumbing bill of \$388.00.
- They subsequently found out that the clog was caused by a plastic washer and not a plastic ring, and therefore they believe they should be reimbursed for this plumbing bill.

The respondent's claim that:

- The tenants were shown the plastic ring the caused the blockage and the female tenant admitted at the time that she had accidentally flushed it down the toilet.
- The blockage was caused by this plastic ring when they got lodged in the plumbing and then collected hair.
- The tenants willingly paid the bill at the time, as they knew they had caused the blockage.

4. Loss of rent from previous suite as a result of moving out early &

5. extra rent paid as a result of moving out early

The applicants claim that:

- They came to a mutual agreement to move out on June 21, 2009, however they had paid rent for the full month of June.
- They felt pressured into signing a mutual agreement to vacate and therefore feel they should be compensated \$200.00 for vacating before the end of the month.
- They also had to pay extra rent to move into a new place in the month of June, and therefore want to be compensated \$400.00 for the extra rent a paid.

The respondents stated that:

- This is a mutual agreement to end the tenancy.
- This is not a valid claim.

## 6. Denial of access to mailbox

The applicants claim that:

- On June 19, 2009 they went to retrieve mail from the mailbox and found that the key would no longer open the mailbox.
- They found out the landlords had ordered new keys to the mailbox thus cancelling their keys and their access to the mailbox.
- Since they still had access to the suite until June 21 they want to be compensated \$200.00 for this inconvenience.

The respondent's claim that:

- It was Canada Post who change the mailbox lock early, and not at their request.
- They had requested that Canada Post change the locks on the day the tenancy was to end.
- There was certainly no intentional removal or restriction of services and as it turned out there was no mail for the tenants in the box anyway.

## 7. Missed graduation

The applicants claim that:

- The female tenant was forced to miss a graduation ceremony and celebrations of a close friend as she feared that the landlords may cause damage to her personal property or harm their dogs.
- As a result this caused much duress for the female tenant and therefore they are requesting \$200.00 in restitution.

The respondent's claim that:

- The respondents feel this claim is unjustified.

## 8. Landlord use of property

The applicants claim that:

- Although the tenancy was ended by mutual agreement to end the tenancy they feel they should be compensated as though it were a two month Notice to End Tenancy for landlord use.
- They therefore request compensation equivalent to two months' rent to cover moving expenses.
- Amount requested \$1612.00.

The respondent's claim that:

- This tenancy did not end due to a two month Notice to End Tenancy for landlord use it was ended by mutual agreement and there is no requirement in the Residential Tenancy Act for compensation.

## 9. Failure to provide a safe living environment

The applicants claim that:

- The landlords failed to provide a safe living environment because they had a single electrical panel serving to household loads, no fire alarm system, and the clothes dryer that had a faulty timer that use a fork instead of a knob for the dryer switch.
- All of the above were safety issues and therefore they want to be compensated as follows:
  - \$200.00 per month for the entire tenancy for the electrical panel, for a total of \$3031.00.
  - \$200 per month for occurred of 12 months for having to deal with a faulty clothes dryer switch.

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- \$200.00 per month for 12 months for no fire alarm system for a total of \$2400.00.

The respondent's claim that:

- The tenants have provided no evidence to show there was a breach of these standards, or that there was any safety hazard.
- The tenants have also failed to show that they have suffered any loss as a result of these alleged safety hazards.

## 10. Auxiliary expenses incurred Re: early end of tenancy

The applicants claim that:

- they have extra charges for roaming charges notary charges and photocopying charges as a result of the arbitration hearings and they wish to be compensated for those charges as follows:
  - roaming charges \$180.80
  - notary charges \$20.00
  - photocopying \$25.81

The respondents claim that:

- There is nothing in the Residential Tenancy Act giving a Dispute Resolution Officer the right to award damages for expenses incurred due to the dispute resolution process, or in previous dispute resolution hearings.

## Analysis

### 1. Back rent for landlords taking over rental space

It is my decision that the applicants have not met the burden of proving that the garage, workshop, or storage closet, were part of the rental agreement.

The residential tenancy agreement is very specific in stating that only the rental suite is included, and is my finding that if the landlords allowed the tenants to use some other areas it was just for the convenience of the tenant's and cannot be considered part of the tenancy agreement.

There is no evidence that the tenants were ever granted exclusive possession of these areas.

2. Refusal to acknowledge and accommodate noise

The noise the tenants are complaining about, is normal household noise for a family with children, and I will not issue any order for compensation.

The noise cannot be considered excessive, nor was it at an unreasonable time of day or night.

It's unfortunate that the tenants found this noise to be disturbing however I deny this portion of the tenants claim.

3. Money paid for repair of bathroom plumbing

This is money that the tenant's willingly paid to the landlord at the time of the sewage backup, after being informed of what caused the backup.

The tenants argument that they have now found that it was caused by a plastic washer and not a plastic ring, is not a strong argument, as a ring and washer are very similar and there is no evidence to prove that the item that was shown to the tenants at that time is not the item that was removed from the plumbing.



I therefore also deny this portion of the claim.

4. Loss of rent from previous suite as a result of moving out early &
5. extra rent paid as a result of moving out early

The landlords and tenants came to a mutual agreement to end this tenancy on June 21, 2009 and there was no agreement at the time that the landlords would compensate the tenants for any loss or extra costs associated with ending the tenancy, nor was there any agreement that the tenants would compensate the landlords for any loss that they may incur from the end of the tenancy.

In the absence of any agreement for compensation I will not allow this portion of the claim.

6. Denial of access to mailbox

I also deny the claim for \$200.00 for the denial of access to the mailbox. There is no evidence that the landlords intentionally denied the tenants access to their mailbox, nor is there any evidence that the tenant suffered any loss as a result of the inability to access their mailbox. This was at most an inconvenience.

7. Missed graduation

I also deny the claim for the missed graduation, as there is no evidence to show that the tenants concerns were valid, or that the landlords ever threatened to damage their personal property or harm their dogs.

8. Landlord use of property

I also deny the claim for the equivalent of two months' rent compensation for landlord use of property, because this tenancy was not ended for landlord use of property, it was ended by mutual agreement and there is no requirement under

the Residential Tenancy Act to pay compensation when a tenancy is ended by mutual agreement.

9. Failure to provide a safe living environment

I also deny the claim for failure to provide a safe living environment, because not only has the tenants failed to prove that there are any safety violations; they have also failed to show that they suffered any loss as a result of the alleged violations.

There was at most some possible inconvenience, but no significant loss of use.

10. Auxiliary expenses incurred Re: early end of tenancy

I also deny the claim for auxiliary expenses, because the landlords are correct I have no authority to award expenses incurred due to a dispute resolution process, and especially not a previous dispute resolution hearing.

The only cost I have the authority to award is the filing fee, and in this case I deny the claim for the filing fee and order that it be borne by the applicants, because I have found that none of the tenant's claims are justified. If

Conclusion

This application is dismissed in full without leave to reapply.

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: August 24, 2010.

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Dispute Resolution Officer