



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the female tenant only. The landlord did not attend.

This hearing was originally convened on November 29, 2010 at which time the female tenant was unable to provide confirmation of how the male tenant served the landlord with the notice of the hearing. The male tenant was unavailable for that hearing and as such, the hearing was adjourned to confirm sufficient service of the landlord.

The tenants have submitted documentary confirmation that the landlord was served with notice of this second hearing via registered mail on December 14, 2010. Based on the documentary evidence and the tenant's testimony I accept the landlord has been served with notice of this hearing in accordance with the *Residential Tenancy Act (Act)*.

At the end of the hearing I asked the tenant to provide an explanation of how they determined the value of the claim, the tenant could not explain but suggested her husband could. As such, I asked the tenant to have her husband submit an explanation via fax no later than the end of business on December 21, 2010. The tenants did not submit any explanation.

### Issues(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Act*.

### Background and Evidence

The tenants submitted a copy of a tenancy agreement indicating the parties agreed to a 1 year fixed term tenancy beginning on January 15, 2010 for a monthly rent of \$1,400.00 with a proviso that if the tenants paid the rent for the full term of the tenancy

at the start of the tenancy the landlord would accept rent for 11 months only or a total of \$15,400.00.

The tenants provided in their written submission that the landlord never informed them of the major renovations that were to be undertaken beginning in July 2010. The tenants acknowledge the landlord had indicated that he might change some windows in the unit.

The tenant states that in April 2010 they were informed by one of their neighbours that there was a "major reconstruction project scheduled to commence shortly. Later in July 2010 the tenants again stated that their neighbours informed them that they would have to move their boat trailer in two days because construction was about to begin and the parking lot was to be used by the contractor.

Construction began on July 24, 2010 and while the first three or four weeks were not that intrusive, according to the tenant's testimony, the contractor was preparing the site for work. The work began in earnest towards the beginning of September 2010. To date the work has included the replacement of windows, balconies; siding; roofing, and entry access.

The tenants likened the work to being done in a "factory assembly line" fashion where the same work is done to each unit at the same time and then the next type of work is done on all the units and so on. As a result the construction on this particular rental unit has been ongoing since it began and the tenants have not any communication from the landlord as to the duration of the work.

The tenants submitted a copy of an email from the landlord dated September 20, 2010 offering to reduce the rent to \$850.00 effective October 1, 2010, for the duration of the term. The tenants, in this application sought compensation in the amount of \$8,900.00 but as noted above did not provide any explanation as to how they determined this amount.

### Analysis

Based on the evidence submitted and the undisputed testimony from the tenants, I accept that the value of the tenancy was reduced significantly as a result of the construction underway on the residential property and within the rental unit itself.

I also accept the tenants' assertion that the landlord must have known, based on the severity of the work undertaken, long in advance of the start of work. I cannot determine, with any certainty if he knew prior to entering into the tenancy agreement the degree to which the work would impact the tenancy.

As per the rental agreement, the tenants had paid the landlord \$15,400.00 for rent for the 12 month term; this meant the monthly rent amounted to \$1,283.33. I note that the reduction offered by the landlord meant the tenants rent would have been reduced by

\$433.33 per month for the remainder of the term (4 months) for a total compensation of \$1733.32.

In the absence of any explanation from the tenants as to why they had claimed \$8,900.00 I accept the landlord's offer to be reasonable and a fair representation of the reduction in the value of the tenancy.

However, as the disruptive portion of the construction began in late August and early September 2010, I find it reasonable to extend the rent reduction to include September 2010.

### Conclusion

As the tenants have paid rent until the end of the fixed term I find that the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$2,266.65** comprised of \$2,166.65 rent reduction and the \$100.00 fee paid by the tenants for this application.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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 22, 2010.

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Dispute Resolution Officer