



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

**Dispute Codes** MNDC, RP, RR, FF, O

### **Introduction**

This hearing was convened by way of conference call to deal with the tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord make repairs to the unit, site or property; for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; to recover the filing fee from the landlord for the cost of this application; and for an order that the landlord comply with the *Act* with respect to the tenants' right to quiet enjoyment.

The landlord attended the conference call hearing, and the female tenant also attended. Both parties gave affirmed testimony and were given the opportunity to cross examine each other on their evidence.

At the outset of the hearing, the tenant stated that she and her family have vacated the rental unit, and therefore the application for an order that the landlord make repairs to the unit, site or property is withdrawn and is therefore dismissed without leave to reapply. Similarly, the application for an order that the landlord comply with the *Act* with respect to the tenants' right to quiet enjoyment is also dismissed without leave to reapply as withdrawn.

The parties were also concerned that I did not have all the evidence that they intended to rely on for this hearing, and I note that the parties had a prior hearing unrelated to this matter, which was decided on by another Dispute Resolution Officer, who severed this portion of the applications. I have since obtained the evidence from those files, and all evidence, at the request of the parties, has been reviewed. All information and testimony provided has been reviewed and is considered in this Decision.

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

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order reducing rent for repairs, services or facilities agreed upon but not provided?



## **Background and Evidence**

This fixed-term tenancy began on May 12, 2010 and was to expire on May 12, 2012. Rent in the amount of \$950.00 per month was payable in advance on the 12<sup>th</sup> day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$500.00.

The undisputed evidence of the parties is that a tenancy agreement was prepared and signed by the parties, a copy of which was provided in advance of the hearing, however an addendum to that agreement was not provided which states that the internet is the financial responsibility of the tenant. Further, the tenants vacated the rental unit on December 21, 2010.

The tenant testified that the landlord had verbally agreed at the outset of the tenancy that the repairs to the annex of the house and basement would be completed by the end of June, 2010. Repairs were not completed by October 22, 2010 and the tenant sent a letter to the landlord requesting the repairs be completed. After the letter was received, the landlord took away the flooring that was stacked in a room and supposed to be laid, as well as the wood burning stove, without notice to the tenants. The furnace only heated the rear portion of the house and there were no floor vents in the kitchen. Further, an email from the landlord indicated that the heating would be relatively inexpensive due to the wood burning stove which was removed by the landlord, and the tenant requests compensation for the loss of the wood stove.

The tenant was required to move her graphic design office to another location due to the repairs not being completed, and the landlord knew that the tenants intended to run that business from the basement of the rental unit.

Further, the water pressure was not enough to run hot and cold water at the same time. She stated that her family was unable to use the main bathroom shower, due to the poor water pressure; they rented the house with 2.5 bathrooms and the tenant requests reimbursement of a portion of the rent to compensate for that loss. She further stated that the landlord locked up the snow blower which was to be included in the tenancy.

The tenant stated that the parties discussed an agreement that the tenants would pay \$950.00 per month for the main part of the house including utilities, but excluding the A-Frame portion of the house; or \$950.00 per month for the whole house without utilities included. The tenant feels that because of the option, that makes the A-frame part of the house worth at least \$400.00 per month, and the tenant paid all utilities.

The tenant claims \$950.00 as a rent reduction for the landlord's failure to complete the repairs and renovations in a timely manner.

The landlord testified that the tenants were not supposed to have the A-Frame portion of the house until July. Further, the tenant husband was a handy man and he was going to lay the flooring and complete the drywall in the basement if the landlord paid for the materials.

The landlord also testified that she had planned to replace the woodstove and the dishwasher, and did in fact replace the dishwasher. The fire box in the woodstove was burned out, and instead of replacing the woodstove, the landlord replaced the furnace at a cost of \$4,000; the old furnace cost alot to operate.

The landlord also stated that the male tenant rewired the hot tub and built a barn on the property without obtaining permits; that cost the landlord \$400.00 to rectify.

The landlord agreed that the tenants could use the snow blower, but they didn't keep the door locked on the shed that it was stored in, so the landlord locked it up.

The landlord had also planned to complete the exterior of the house, but she could not do it by herself and the tenant wouldn't allow anyone else on the property. She stated that on August 20, 2010 she offered to put in the flooring, but the tenant stated she was too busy, knowing that the landlord was going away to the U.S. for 6 weeks to 2 months, and this would be the last chance to complete the job before she left.

## **Analysis**

Firstly, with respect to the tenant's assertion that the landlord removed the wood stove without notice, I note that the tenant was provided with notice in an email on April 15, 2010, prior to moving into the house, and acknowledged that notice in a reply email the same day. I also find that the landlord did not remove the wood stove until about 6 months later, but replaced the furnace with a more efficient furnace prior to removing the wood stove.

I have also reviewed the tenancy agreement, and there is no indication in that agreement stating that the snow blower was included in the rent. The tenant stated that the agreement was verbal however the landlord has disputed that evidence. In the absence of any proof of an agreement, when in dispute, the tenant's application for recovery of a portion of the rent for the loss of that item cannot succeed. I find that the landlord may have offered it to the tenant for a time, but I accept the evidence of the landlord that she locked it in the shed to prevent it from being stolen.

With respect to the tenant's assertion that because of the option discussed of \$950.00 per month with or without utilities, that makes the A-frame part of the house worth at

least \$400.00 per month, I accept that the tenants paid all utilities, but I have no evidence before me what the amount of the utilities were. The tenant indicated in written material that the average price of electricity was \$125.00 per month and \$95.00 per month for gas, for a total of \$220.00. I do not accept that cable vision was ever discussed, and even if it were to be included, that cost is stated to be \$60.00 per month, which would then total \$280.00 per month for utilities. No utility bills were provided to substantiate that evidence, and therefore I cannot accept \$400.00 per month as the worth of the A-frame portion of the house.

I have also reviewed the letter sent to the landlord by the tenant dated October 22, 2010 and the landlord's reply. The tenant's letter lists demands of repairs to be made. The landlord's position is that the agreement did not include repairs to the annex portion of the house, and that the tenants accepted the rental unit in "as-is" condition. I also note, however that the landlord did complete some of those repairs during the tenancy. The tenancy agreement is silent with respect to what was agreed to for repairs to the annex, and the landlord's position is that the tenants enjoyed full use of the annex. The tenant claimed that the landlord knew she intended to use the basement for her business, but could not due to the condition of the basement. Again, the tenancy agreement is silent with respect to renovations or repairs to the basement.

The *Residential Tenancy Act* states as follows:

**32 (1)** A landlord 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 tenancy agreement states a very similar clause, as well as, "If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may seek a dispute resolution officer's order under the Residential Tenancy Act for the completion and costs of the repair." I find that the tenant asked for certain repairs to be completed, but did not make an application for an order that the landlord complete those repairs. The tenant testified that the landlord had verbally agreed at the outset of the tenancy that the repairs to the annex of the house and basement would be completed by the end of June, 2010. The landlord testified that the tenants were not supposed to have the A-Frame portion of the house until July. Further, the tenant husband was a handy man and he was going to lay the flooring and complete the drywall in the basement if the landlord paid for the materials. In the circumstances, I find that if a verbal agreement that supports the tenants' claim is considered, then verbal agreements that support the



# Dispute Resolution Services

Page: 5

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

landlord's claim must be equally considered. I cannot find that the landlord failed to maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and the unit was suitable for occupation by a tenant.

The landlord clearly took steps to complete some of the renovations during the tenancy, and the tenant did not allow the landlord to make repairs during some of that time. I refer to the landlord's testimony, which is not disputed by the tenant, that on August 20, 2010 the landlord offered to put in the flooring, but the tenant stated she was too busy, knowing that the landlord was going away to the U.S. for 6 weeks to 2 months, and this would be the last chance to complete the job before she left. Also, one of the verbal agreements included that the tenant would lay the floor, and that was not completed by October 22, 2010, and the flooring was not removed by the landlord until after that date.

The tenants' application is for a monetary order for \$950.00, the equivalent of one month's rent for the landlord's failure to maintain the property. In the circumstances, I cannot find that the tenants have established the claim.

## **Conclusion**

For the reasons set out above, the tenants' application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement is hereby dismissed without leave to reply.

Similarly, the tenants' application for an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided is hereby dismissed without leave to reapply.

Since the tenants have not been successful with their claim, the tenants are not entitled to recover the filing fee for the cost of this application from the landlord.

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: January 26, 2011.

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Residential Tenancy Branch