



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

### Dispute Codes:

OLC and FF

### Introduction

This hearing was scheduled in response to the Tenants' Application for Dispute Resolution, in which the Tenants made application for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)*, *Regulation*, or tenancy agreement and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord should be prevented from installing a fence in the yard of the residential complex and whether the Tenants are entitled to recover the fee from the Landlord for the cost of filing this Application for Dispute Resolution.

### Background and Evidence

The Landlord and the Tenants agree that one of the Tenants moved into the rental unit in 1988 and that both Tenants entered into a new tenancy agreement with the former owner of the rental unit on August 01, 2009. The parties agree that the Landlord purchased the property on November 03, 2009 and that this tenancy continued under the terms of the most recent tenancy agreement.

The Landlord and the Tenants agree that the terms of the written tenancy agreement require the Tenants to pay monthly rent of \$950.00 on the first day of each month.

The Landlord and the Tenants agree this residential complex is a duplex with two lower and two upper rental units; that the Tenants live in the lower portion of one duplex; and that all occupants of the residential complex currently share the front and rear yards.

The Tenants stated that prior to the Landlord purchasing the property they had been paid \$75.00 per month to maintain the yard; that they have not attempted to reach an agreement with the new Landlord regarding payment for maintaining the yard; and that they have made substantial improvements to the yard.

The Landlord stated that other occupants in the residential complex have expressed an interest in fencing the front yard for the purposes of providing additional security for their children who play in the front yard. The Landlord stated that she wishes to erect a fence around the front yard provide the occupants of the upper unit of 7141 with exclusive use of the front yard.

The Landlord stated that other occupants in the residential complex have expressed an interest in dividing the rear yard with a fence for the purposes of providing privacy to the occupants in the complex. The Landlord stated that she wishes to divide the rear yard for the purposes of providing the occupants of the upper and lower suite of unit 7143 the shared use of one side of the back yard and these Tenants with the exclusive use of the other side of the back yard.

The Tenants oppose the Landlord's plan to fence the yard as they believe it will interfere with their enjoyment of the yard. They contend that the yard is available for the enjoyment of all occupants of the residential complex and that they have spent extensive time and money on the landscaping in the yard. The Tenants submitted photographs that demonstrate the yard is very nicely landscaped. The Tenants contend that they have asked the children not to play in the water features or to trample the plants and not to damage their vehicles with their ball, but generally speaking they have not interfered with the children playing in any part of the yard.

The Tenants contend that if the Landlord is permitted to erect a fence, the Landlord should be responsible for the cost of moving the plants and landscaping onto the area that is designated for the exclusive use of the Tenant. The Landlord stated that the Tenants may move any landscaping items that they planted or installed or they can leave the items in place, but she does not wish to absorb the costs of moving anything.

The Landlord stated that she wishes to erect the fence around the front yard immediately and she would like to erect the fence in the rear yard in two months. The Tenants contend that it will take them approximately one year to move the plants and landscaping features onto the area designated for their exclusive use.

### Analysis

Section 27(1) of the *Act* stipulates that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement. There is no evidence to suggest that the use of the common yard area is a service or facility that is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy

agreement, and I therefore find that section 27(1) does not impact the Landlord's right to erect a fence in the yard of this residential complex.

Section 27(2) of the *Act* stipulates that a landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I find that the Landlord has the right to erect a fence around the front yard of the residential complex and provide exclusive access to that area to the occupant living in the upper portion of unit 7141, pursuant to section 27(2) of the *Act*.

I find that the Landlord has the right to erect a fence that divides the rear yard into two reasonably equal sizes and to provide exclusive access to one side of the yard to the occupants living in the upper and lower portion of unit 7143, pursuant to section 27(2) of the *Act*.

I find that the Landlord has the right to erect a fence that divides the rear yard into two reasonably equal sizes and to provide exclusive access to one side of the yard to the occupants living in the lower portion of unit 7141, pursuant to section 27(2) of the *Act*.

While I accept that the value of the Tenants' tenancy is reduced by the withdrawal of the shared use of the entire yard which they have previously had access to, I find that the value of their tenancy is unilaterally increased by the provision of an area of the yard that is designated for their exclusive use. I find that providing the Tenants' with the exclusive use of one portion of the yard is adequate compensation for the withdrawing their access to the entire yard that they formerly shared with all occupants of the complex. I therefore find that the Landlord may erect a fence around the front yard and divide the rear yard with a fence without compensating the Tenants' with anything other than an agreement that they can have exclusive use of one side of the rear yard.

I find that the Tenants were compensated for maintaining and improving the yard, at a rate of \$75.00 per month prior to this Landlord purchasing the property in November of 2009. While I do not doubt that the Tenants spent a considerable amount of time and money maintaining and improving the yard, I find that they did so at their own initiative and that they should not have expected compensation for their labors in excess of the \$75.00 per month they were paid.

As the Tenants were not required to make the landscaping improvements that were made and that they were compensated, to some degree, for the work that was done, I find that the Landlord is under no obligation to compensate them if the Tenants now elect to move plants or other landscaping features onto the area of the yard that is to be designated for their exclusive use.

### Conclusion

I find that there is no reason to grant an Order preventing the Landlord from erecting a fence on the property of the rental unit, as I find that erecting a fence does not breach any section of the *Act*. On this basis, I dismiss the Tenants' application for an Order requiring the Landlord to comply with the *Act*.

In recognition of the time that the Tenant(s) have lived in the rental unit, I do find that it is reasonable that the Tenants be given a reasonable amount of time to move the plants and landscaping features onto the area of the yard that is to be designated for their exclusive use. As most of the plants and landscaping features are in the rear yard, I hereby give the Landlord authority to begin construction of the fence in the front yard on April 01, 2011 and to begin construction of the fence in the rear yard on September 01, 2011. These delays in construction should provide the Tenants with a reasonably opportunity to move their plants and landscaping features.

I find that the Tenants' Application for Dispute Resolution has been without merit and I dismiss their application to recover the cost of filing this Application for Dispute Resolution.

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: February 08, 2011.

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Residential Tenancy Branch