



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

### Dispute Codes:

MNDC, RP, OLC, LRE, and FF

### Introduction

This hearing was scheduled in response to the Tenants' Application for Dispute Resolution, in which the Tenants made application for a monetary Order for money owed or compensation for damage or loss, for an Order requiring the Landlord to make repairs to the rental unit, for an Order requiring the Landlord comply with the *Residential Tenancy (Act)* or the tenancy agreement, for an Order suspending or setting conditions on the right to enter the rental unit; and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

The Tenants contend that they sent copies of the Application for Dispute Resolution and Notice of Hearing to the Landlord, via registered mail, at the address noted on the Application, on March 04, 2011. Canada Post documentation was submitted to corroborate this statement. In the absence of evidence to the contrary, I find that the Landlord was served with these documents in accordance with section 89 of the *Act*, however the Landlord did not appear at the hearing.

The Tenants submitted a package of evidence to the Residential Tenancy Branch on March 11, 2011, which they contend was also served to the Landlord, via registered mail, at the address noted on the Application, on March 11, 2011. In the absence of evidence to the contrary, I find that the Landlord was served with this evidence and the evidence was considered when making a determination in this matter.

### Issue(s) to be Decided

The issues to be determined are whether the tenancy agreement includes the use of the garage, whether the Tenants should be compensated for being without a functional oven and for living with doors that are not equipped with proper weather stripping, whether there is a need to order the Landlord to repair the weather stripping, whether there is a need to restrict the Landlord's right to enter the rental unit, and whether the Tenants are entitled to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

### Background and Evidence

The Tenants submitted a copy of the tenancy agreement that shows this tenancy began on September 01, 2010 and that the Tenants agreed to pay monthly rent of \$1,500.00. The Tenants stated that the tenancy agreement relates to a single family dwelling with an attached garage, from which the main living area of the home can be accessed. There is nothing in the tenancy agreement before me that indicates the Landlord retains the right to access the garage that is attached to the house.

The Tenants contend that there were personal belongings in the garage that belonged to the Landlord's realtor when this tenancy began. They contend that the Landlord and the Tenants agreed that the property could remain in the garage for a few weeks after the tenancy began but that the property would be removed during the first few weeks of the tenancy and that the Tenants would then have exclusive use of the garage.

The Tenants contend that after the tenancy began the Landlord did not provide them with exclusive use of the garage, the Landlord continued to allow property to be stored in the garage, the Landlord advised the Tenants that he would continue to access the garage, and that the realtor did access the garage in January of 2011 without permission from the Tenants.

The Tenants contend that the bottom element in the oven did not work at the beginning of the tenancy and the top element stopped working approximately two months ago. They contend that they reported the problem to the Landlord as soon as the top element stopped working and that it was not repaired for approximately 3-4 weeks. They are seeking compensation for being without an oven for approximately 3-4 weeks.

The Tenants contend that the weather stripping around the front door and the door between the residence and the garage is old and does not properly seal the doors. They contend that this has drastically impacted their hydro bill and they are seeking compensation for the extra hydro costs they have incurred.

The Tenants submitted a photograph of the door between the garage and the house, which shows there is a small space between the bottom of the door and the floor. The Tenants submitted photographs of the front door, which shows the door does not seal perfectly. The photographs show that this is an older home in a less than perfect state of repair.

The Tenants contend that the Landlord has repaired the weather stripping around the front door, although they believe the repair is inadequate as daylight can still be seen through the door. They are seeking an order that requires the Landlord to make further repairs to this weather stripping.

The Tenants contend that the Landlord has not yet repaired the weather stripping around the door between the garage and the rental unit. They are seeking an order that requires the Landlord to make repair this weather stripping.

The Tenants were not permitted to testify about other items in the rental unit that need repair, as they did not clearly advise the Landlord in their Application for Dispute Resolution that those issues would be considered at this hearing. The Tenants retain the right to file another Application for Dispute Resolution seeking repairs if the Landlord fails to make repairs that the Tenants believe he is obligated to make.

### Analysis

Based on the tenancy agreement that was submitted in evidence and the testimony of the Tenants, I find that the Landlord and the Tenants entered into a tenancy agreement for this single family dwelling and attached garage. Based on the testimony of the Tenants and in the absence of testimony to the contrary, I find that the attached garage was included in the tenancy agreement. In the event that the attached garage was not included in the tenancy agreement, I would normally expect a tenancy agreement to specifically exclude the garage. There is nothing in the agreement that causes me to conclude that the garage has been excluded.

I therefore find that the Tenants have exclusive use of the garage for the duration of the tenancy. I hereby Order the Landlord to remove any personal property not belonging to the Tenants and that cannot reasonably be considered a fixture of the residence by April 15, 2011.

I further Order the Landlord to comply with section 29(1) of the *Act* when he wishes to access the garage or the rental unit. For the benefit of both parties, section 29(1) of the *Act* reads as follows:

A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

Section 27(2)(b) of the *Act* stipulates that a landlord cannot terminate or restrict a service unless the landlord 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. In my view being without an oven for 3-4 weeks constitutes a reduction in a service or facility that was to be provided with the tenancy. I therefore find that the value of the tenancy agreement has been reduced by \$100.00 for the 3-4 weeks the Tenants were without a functioning oven. In determining that

reduced value of the tenancy, I was influenced by the fact that the Tenants were still able to cook on the range top.

Section 32(1) of the *Act* requires landlords to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The Tenants have submitted no evidence to show that health, safety and housing standards require an exterior door to be equipped with weather stripping. Based on the photographs submitted in evidence, I find that the condition of the weather stripping around the doors is consistent with a home of this vintage and this state of repair.

For the aforementioned reasons, I find that the Tenants have failed to establish that the Landlord has failed to comply with section 32(1) of the *Act*, or any other section of the *Act*, when he did not provide fully functional weather stripping. Section 67 of the *Act* authorizes me to award financial compensation only when a landlord or a tenant suffers a loss from the other party's failure to comply with the *Act*. As the Tenants have failed to establish that the Landlord has failed to comply with the *Act* in regard to the weather stripping, I am unable to award the Tenants' compensation for any losses they experienced as a result of the condition of the weather stripping.

As the Tenants have failed to establish that weather stripping in the rental unit does not comply with section 32(1) of the *Act*, I dismiss their request for an order requiring the Landlord to repair the weather stripping. The *Act* does not require landlords to provide rental accommodations that are in perfect condition. On this basis, I dismiss the Tenants' application for an Order requiring the Landlord to make repairs.

I find that the Tenants' Application for Dispute Resolution has merit and I find that the Tenant is entitled to compensation, in the amount of \$50.00, for the cost of filing this Application for Dispute Resolution.

### Conclusion

I find that the Tenants have established a monetary claim, in the amount of \$150.00, which is comprised on \$100.00 in compensation for living without a functional oven for 3-4 weeks and \$50.00 in compensation for the filing fee paid by the Tenant for this Application for Dispute Resolution. Based on these determinations, I hereby authorize the Tenants to reduce the next monthly rent payment by \$150.00.

Dated: March 23, 2011.

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Residential Tenancy Branch