



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MNDC, RR, FF

### Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act or tenancy agreement, for a rent reduction and to recover the filing fee for this proceeding.

### Issue(s) to be Decided

1. Is the Tenant entitled to compensation and if so, how much?
2. Is the Tenant entitled to a rent reduction and if so, how much?

### Background and Evidence

This month-to-month tenancy started on June 1, 2010. Rent is \$1,943.70 per month plus utilities. The Tenant rents the rental property with 2 other co-tenants who are not named as parties in this proceeding. The rental property includes a 3 bedroom home as well as a shop, carport, yard and indoor pool area. The rental property also has a centrally located wood burning fireplace.

In November of 2010, the Tenant and his co-tenants reported to the Landlord that the carbon monoxide detector was going off late at night so the Landlord had a 3<sup>rd</sup> party inspect the rental property. On November 29, 2010, the Landlord received an inspection report that determined that the pool heater was causing humidity to accumulate which activated the exhaust fan in the pool room. The exhaust fan then created a negative pressure that sucked air out of the house through the fireplace when it was in use and had burned down to coals. The report recommended removing the pool heater and repairing the fireplace and chimney. As a result of these findings, the Landlords argued that it was necessary for the tenants' safety that either their use of the pool or the fireplace had to be terminated. The Landlords said they believed based on correspondence with the Tenant that his preference was to keep the pool and as a result the Landlords proposed to decommission the fireplace.

The Tenant said that he and his co-tenants wanted to keep both the fireplace and the pool and argued that he did not believe it was necessary to terminate his use of either.

The Tenant also sought a compensation of \$1,000.00 for supplies and labour to get the pool in working order. The Landlords argued that they should not be responsible for compensating the Tenant and his co-tenants for getting the pool operational because they were advised at the beginning of the tenancy that it did not work and probably should stay that way. The Tenant claimed however, that the Landlord (T.A.) advised him at the beginning of the tenancy that if the tenants were going to repair the pool it would have to be at their own cost. The Tenant said he was only seeking to recover these expenses if the pool was decommissioned.

### Analysis

Section 27(1) of the Act says that a Landlord may 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.

I find that neither the pool nor the fireplace is essential to the tenants' use of the rental unit as living accommodation. The fireplace is a secondary heat source and according to the Landlords, does not give off sufficient ambient heat to warm the entire rental property. The rental property has 2 furnaces which are the primary heat sources. I also find that the pool and pool room are not essential to the tenants' use of the rental unit as living accommodation but rather are solely used for recreation and a secondary place for entertaining. Furthermore, the tenancy agreement contains no terms with respect to the fireplace or the pool and therefore I conclude that they are not material to the parties' tenancy agreement. Consequently, I find that the tenants' use of the fireplace and the pool may be terminated at the Landlords' discretion.

Section 27(2) of the Act says (in part) that a landlord must not terminate or restrict a (non-essential) service or facility unless the Landlord gives the Tenant 30 days' written notice and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement. The Landlords argued that either the fireplace or the pool must be decommissioned for safety reasons and that they are seeking input from the tenants as to which it will be. At present, however, the Tenant disagrees with the decommissioning of either amenity. In the absence of a decision as to what service or amenity will be terminated, I find that the Tenant's application for a rent reduction is premature and it is dismissed with leave to reapply.

The Tenant admitted that he agreed at the beginning of the tenancy to bear the costs of repairing the pool so he and his co-tenants could use it and as a result, I find that he cannot now seek compensation from the Landlords for doing so. Consequently, this part of the Tenant's application is dismissed without leave to reapply as is his application to recover the filing fee for this proceeding.

Conclusion

The Tenant's application for a rent reduction is dismissed with leave to reapply. The Tenant's application for compensation for pool repair expenses and to recover the filing fee for this proceeding are dismissed 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: April 21, 2011.

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Residential Tenancy Branch