



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR RR OPR MND MNR MNSD MNDC FF O

### Introduction

This hearing dealt with applications by the tenants and the landlord. The tenant applied to cancel a notice to end tenancy, as well as recovery of the security deposit and further monetary compensation. The landlord applied for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. One tenant and both landlords participated in the conference call hearing.

The tenants vacated the rental unit prior to the hearing. Accordingly, I dismissed the portions of the tenants' application and landlord's application regarding the notice to end tenancy and an order of possession.

I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issue(s) to be Decided

Are the tenants entitled to monetary compensation as claimed?  
Is the landlord entitled to monetary compensation as claimed?

### Background and Evidence

The tenancy began on May 1, 2011. Rent in the amount of \$1000 was payable in advance on the first day of each month. The rental unit is a detached single-family dwelling on three-quarters of an acre of land.

At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$500. The tenants did not pay rent for September 2011, and on September 20, 2011 the landlord served the tenants a notice to end tenancy for unpaid rent. On September 26, 2011 the tenants moved out of the rental unit.

*Tenants' application – Evidence of Tenants*

At the outset of the tenancy, the landlord and the tenants discussed some items that would require repair, including the deck and the sliding doors. The deck was very rotten and in dangerous shape, and the frame for the sliding doors was rotten.

At move-in the house was filthy, and it took the tenant a month to clean it up. The tenant went on three occasions to talk to the landlord about repairs, but the landlord did nothing. The tenant then started leaving notes for the landlord, in a mailbox that an employee at the landlord's store pointed out to the tenant. The landlord brought a power washer to the tenants, and the tenants spent two and a half days power washing the deck so that the landlord could repair it. The landlord did not repair the deck or the doors.

An earwig problem began to develop in the backyard, and then it moved into the house. There was also a rat problem. The tenants spent hundreds of dollars on poison for the bugs and rats. The tenants were unable to have guests over or use their deck because of the poison. The basement was wet, and there were electrical problems. The tenants were not getting any response from the landlord, so they decided not to pay rent in September 2011. When the landlord served the tenants the notice to end tenancy for unpaid rent, the tenants decided to move out.

The tenants have claimed return of their security deposit, as well as recovery of all of the rent they paid for June, July and August 2011, in the amount of \$3000.

#### *Tenants' Application – Landlord's Response*

The landlord and the tenants had initially discussed rent of \$1100, but the landlord knew the deck and sliding doors were at issue, so they reduced the rent by \$100. The rental unit is a 1935 house with a lot of upgrades and additions. The landlord told the tenants at the outset of the tenancy that the landlord would be busy from May to October, but they would try to fix the sliding door.

During the tenancy, the tenants told the landlord about the problem with the upstairs bathroom, and the landlord repaired it the next week. The landlord also took care of the back yard. The landlord never saw any of the tenants' notes, and was not aware that there were any issues until they did not receive September rent.

*Landlord's Application – Evidence of Landlord*

The landlord did not know the tenants did not pay September rent until September 15, 2011. On September 19, 2011 the landlord spoke with the tenants, who informed the landlord of mouse and earwig issues. On September 20, 2011 the landlord spent eight and a half hours cleaning up the yard of the rental property. The landlord also inspected the house, and found no sign of significant mouse or earwig problems

The landlord has claimed \$1000 for September 2011 rent; \$240 for the yard work done on September 20, 2011; \$150 for the cost of a tractor to haul away nine loads of debris; \$50 for insect and rodent poison; and \$10 for hauling away one load of trash that the tenants left behind.

Analysis

Upon consideration of the evidence, I find as follows.

*Tenants' application*

I accept the evidence of the landlord that they did not receive any of the tenant's written requests for repairs, and that they therefore were not aware of some of the tenants' concerns about the rental unit. The tenant's evidence regarding the notes was she left them in a mailbox that was pointed out to her by an employee at the landlord's store. There is no evidence that the landlord provided that mailbox as a place where the landlord would receive the tenant's written requests. Once the landlord became aware of the rodent and insect problems, the landlord took immediate steps to address the problem.

However, the landlord was clearly aware of the problems with the sliding door and the deck. The landlord did not provide any evidence to show that the rent was reduced by \$100 per month. The landlord had an obligation to repair the deck and sliding door, and was not excused from doing so because they were busy with their other business for the summer months. I accept the evidence of the tenants that they were unable to use the deck or the sliding door for the duration of their tenancy. I find that the tenants are entitled to compensation of \$100 per month, for the months of May through September 2011, for loss of use of the deck and sliding door, for a total of \$500. I dismiss the remainder of the tenants' monetary claim.

As the tenants' claim was only partially successful, I find they are not entitled to recovery of the filing fee for the cost of their application.

*Landlord's Application*

The landlord is entitled to rent for September 2011, in the amount of \$1000.

The landlord is not entitled to costs for the back yard cleaning or treating for vermin, as these are costs that the landlord incurred in the course of their business as landlords. The landlord did not provide sufficient evidence to establish that the tenants should be held responsible for cleaning the back yard, hauling away debris or treating for vermin. Further, the landlord did not provide sufficient evidence to establish the cost for hauling the tenant's garbage. I therefore dismiss these portions of the landlord's claim.

As the tenants' claim was only partially successful, I find they are not entitled to recovery of the filing fee for the cost of their application.

Conclusion

The tenant is entitled to \$500. The landlord is entitled to \$1000. I order that the landlord retain the security deposit of \$500 in full satisfaction of the balance of their monetary award.

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: November 14, 2011.

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Residential Tenancy Branch