



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC, PSF, RR, FF

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; to have the landlord provide services and facilities required by law; and for a rent reduction for repairs, services or facilities agreed upon but not provided.

The hearing was conducted via teleconference and was attended by the male tenant and the landlord.

The tenant provided late evidence twice, once on January 12, 2012 and once on January 13, 2012. The tenant testified that he served the landlord personally on January 11, 2012 and January 13, 2012. The landlord testified that she received the additional evidence on January 12, 2012 and January 13, 2012.

Regardless of whether the tenant served the landlord on January 11 and 13 or January 12 and 13, both these evidence packages are too late to be considered for this hearing. As such, I have not considered them in this decision.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to an order to have the landlord comply with the *Act*, regulation or tenancy agreement; to have the landlord provide services and facilities required by law; to have the rent reduced for repairs, services or facilities agreed upon by not provided; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agree the tenancy began on June 1, 2011 as a 1 year fixed term tenancy for the monthly rent of \$1,625.00 due on the 1<sup>st</sup> of each month with a security deposit of \$812.50 and a pet damage deposit of \$812.50 paid.

The tenant testified that he had been playing with his young daughter in the back at which point she walked over the storm grate in the parking lot and fell into the hole with the grate narrowly missing her head. The tenant testified he was made aware of

another incident in which a previous tenant had experienced a similar situation, in which the grate pivoted and he fell into the hole.

The tenant testified that he had received a letter from a previous tenant who states he had complained to the landlord when he lived there that he was carrying his child and they fell through the grate as well and that when he reported it to the landlord she refused to do anything about it.

The landlord testified that despite never having any problems with tenants the tenant that wrote this letter to this tenant was a difficult tenant and she asserts that the former tenant wrote the letter as a favour to this tenant, for some unknown reason.

The tenant submits that they have raised the issue with the landlord but she refuses to do anything. The landlord testified that because she has never had a complaint about this issue from anyone else about this issue it isn't a problem. She also testified that the grate itself is too big for a small child or anyone else to move unless they were in good physical shape.

The landlord testified that the tenant had no right to be the area where the grate as it is not common property but rather it is reserved only for the tenants who pay for parking and that the access to it is from other property that she owns and not common property for this residential property. The landlord testified that she instructed the tenant as to what are the common areas and what areas are not but confirmed this information is not written or contained in the tenancy agreement.

The tenant testified that the landlord attended the building last week and when she did she drove over the grate, causing it to be removed from its place leaving a hole in the ground for a couple of days. The landlord testified that when she arrived on Friday, the grate was in place and when she went to leave it was removed and placed a foot or so away from the hole; that someone had moved in intentionally (the landlord alleges it was this tenant who moved it); and that the hole was filled with wooden logs.

The tenant testified that he had complained about the lighting on the exterior of the residential property and that until last Friday the landlord had done nothing about it but that she then changed the light in the back entrance doorway so now the tenant is only concerned with front porch light and along the north side of the residential property.

The landlord testified that the light along the north side of the property is controlled specifically by one of the rental units that is currently vacant and as such she has no control over its usage and in fact the walkway to that unit is specific only to that unit.

As to the front porch light the landlord's position is that it has never been a problem before these tenants moved in; that the front door is illuminated sufficiently from the street light; and the light would run 24 hours per day because there is no switch to turn it on or off.

The tenants assert both of these issues to be safety issues that require the landlord's attention to be corrected and until such time as they are corrected the tenants seek a \$500.00 rent reduction. The landlord feels that since neither one of these issues have ever been raised by anyone else, according to her testimony, they shouldn't be an issue now.

### Analysis

Section 32 of the *Act* requires a landlord must 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.

Despite the landlord's protestations in her testimony that since these things have not been "an issue" for anyone else, I accept the tenant's position that the lack of lighting and the loose grate have the potential to be safety issues for the residential property.

I find that since, by the landlord's testimony, the tenancy agreement does not specify what is a common area and what is not the landlord cannot restrict the movements of the tenants or their children on the residential property.

I also find that despite the landlord's testimony that the property that gives access to the back of the residential property is a separate property it is still property under the landlord's ownership and unless it is clearly fenced off from use and marked for no trespassers (for any reason, including access) the landlord's argument that it is not part of the residential property are not substantiated.

For the reasons above, I order the landlord have the grate inspected by whichever local authority has jurisdiction on rental property drainage and/or safety to ensure that the grate meets all local requirements for a building of this nature, within 1 Month. Further, if the local authority deems that the grate is unsafe, I order the landlord to make the appropriate repairs, within a reasonable time.

In relation to the lighting, I accept the landlord's testimony that the lighting on the north side of the property is specific to the rental unit that has access from that side and I accept that that lighting is controlled from that unit. For these reasons, I see no reason for the landlord to install different lighting or make current lighting available for all tenants.

While I don't have the benefit of inspecting the sight myself, from the landlord's own photographs, I find the lack of lighting on the front exterior of the residential property to be lacking and I accept the tenant's position that this is a safety concern.

I order the landlord to install, within one week, and leave installed a light bulb in the current fixture. If the landlord is concerned about the light being on all the time she may install either a photo-cell or a motion detector adaptor to assist in energy conservation.

Despite the above findings, I find that the issues identified are not sufficiently significant to warrant rent reduction at this time, I dismiss this portion of the tenants' Application. However, the tenants remain at liberty to file a new Application for compensation should the landlord fail to comply with the orders listed above.

### Conclusion

As the tenants were mostly successful in their Application, I find the tenants are entitled to recover the filing fee for the cost of their Application from the landlord. In accordance with Section 72 of the *Act*, I order the tenant's may deduct this amount from their next monthly rental payment.

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 16, 2012.

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Residential Tenancy Branch