



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, RR, FF

### Introduction

This matter dealt with an application by the Tenants 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. Are the Tenants entitled to compensation and if so, how much?
2. Are the Tenants entitled to a rent reduction?

### Background and Evidence

This tenancy started approximately 7 years ago with only the Applicant, B.S., as a Tenant. The Parties renewed their tenancy agreement for a one year fixed term commencing December 1, 2011 with the Applicant, M.S., added as a Tenant. Prior to December 1, 2011, rent was \$892.00 and increased on December 1, 2011 to \$992.00. Heat and water are included in the rent.

The Tenants' claim is for the loss of use of their balcony for approximately one year. The Tenants claim that they received a written notice from the Landlord on July 25, 2011 that advised them to remove items from their balcony in anticipation of repairs to the decking and railings. The Tenants said they removed their barbeque and patio set and were unable to use the patio again until repairs were completed on June 28, 2012.

The agents for the Landlord claimed that it was a large project that involved repairing all of the balconies in the rental property. The Landlord's agents said they hired an experienced and reputable company which methodically went through the property repairing sections little by little. The Landlord's agents admitted that by October, 2011, the decking could not be replaced because it was too wet and cold to pour concrete so the repairs had to wait until June of 2012 to be completed. However, the Landlord's agents also claimed that the balconies were safe to use in the interim and the Tenants were told in a general written notice to all tenants that they could use them. The Landlord's agents said the balconies were inspected by a municipal inspector in October 2011 who found no safety issues.

The Tenants argued that they were not advised by the Landlord that they could use their balconies. The Tenants claimed that they approached the Landlord's agent, T.J., at some time in November 2011 to see if they could use the deck and she advised them that they could walk on it but should not put any of their belongings on it (which T.J. denied). The Tenants claim that they found four re-bar spikes sticking out of the concrete about ½ of an inch which they felt was a safety hazard. The Tenants said they reported the spikes to the Landlord on November 15, 2011 but nothing was done.

The Tenants said they sent the Landlord another letter on March 24, 2012 advising the Landlord about the spikes and providing photographs but claim they got no response so they sent another letter on April 5, 2012. The Tenants said they were later advised by the Landlord's agent, T.J., that they could put their barbeque and patio set out on the deck but close to the patio doors. However, the Tenants said approximately one week later they got a further written notice from the Landlord advising them that repairs would be resuming and that they would have to remove all items from their patio. The Tenants initially argued that the Notice said they could not use the deck but then conceded it did not say that but argued they could not use it without their belongings on it. The Tenants also argued that the balcony was unsafe in its unfinished condition especially with 4 spikes sticking out of the cement.

The Landlord's agents claimed that the Tenants had the use of the balcony at all times except when repairs were being conducted. The Landlord's agent, T.J., claimed that she told the Tenants on November 4 and again November 16, 2011 that they could use the balcony fully and denied telling them that they could not put anything on it. T.J. said that was the reason a further written notice was sent to all residents of the property in April 2012 asking them again to remove their belongings. The Landlord's agents denied that there were any spikes sticking out of the cement and claimed that these would have been ground down during the preparatory work in October 2011 and would have been detected by the City Inspector. The Landlord's agent, T.J., denied knowing anything about a spike until she received the Tenants' evidence package in this matter.

The Tenants argued that the balcony represents 27% of their living space and they sought a proportional reduction in their rent for a period of 12 months.

### Analysis

Section 27 of the Act says that a Landlord may not terminate or restrict a service or facility unless the Landlord reduces the rent by an amount equivalent to the reduction in the value of the tenancy. Section 32 of the Act places a duty on the Landlord to repair and maintain residential property in a manner that complies with health, safety and housing standards required by law and that makes it suitable for occupation by a tenant.

In this matter, the Tenants have the burden of proof and must show (on a balance of probabilities) that they lost the use of their balcony due to the Landlord's failure to repair

it within a reasonable time. This means that if the Tenants' evidence is contradicted by the Landlord, the Tenants will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I find that in late-July of 2011, the Landlord asked residents of the rental property to remove their personal belongings from the balconies in anticipation of railing and deck repairs. I find that there is no evidence that the Landlord advised Tenants that they could not use their decks during this time. The Tenants argued that they were never advised (except for one week in April 2012) that they could put their furnishings back and claim that they were unable to use their deck without furnishings. The Landlord's agents claim that all residents of the rental property were advised in writing and the Tenants were also advised verbally in November 2011 that they could put their belongings back on the balcony and could make full use of it.

The Tenants further argued that they did not feel safe using the balcony because there were 4 spikes sticking out from the concrete which they brought to the Landlord's attention. The Landlord's agents denied that the Tenants advised them about spikes and claim that none existed after October 2011 when the surface of the balconies were smoothed out and professionally inspected.

Given the contradictory evidence of the Parties on this issue, I find that there is insufficient evidence to conclude that the Tenants lost the use of their balcony due to the Landlord's failure to finish the repairs to the balcony. In particular, I find that there is insufficient evidence that the Tenants were restricted from using the balcony and insufficient evidence to conclude that they were not allowed to put belongings on the balcony for an entire year. I am persuaded that this likely was *not* the case given that the Landlord sent a notice to all residents in April 2012 advising them again to remove their belongings from the balconies in anticipation of finishing the deck repairs.

Consequently, I find that at best the Tenants were unable to put their belongings on their deck for a period of approximately 3 months in 2011 and for 3 months in 2012. I find that the Landlord's request to remove belongings during this period this did not unreasonably restrict the Tenants from using their balcony. The Tenants argued that the balcony comprised 27% of their rented living space however I disagree and find instead that it is an amenity to the living space. Furthermore, given the contradictory evidence of the Parties as to whether there were 4 spikes on the balcony as the tenants claim, I find that the Tenants have not proven that the spikes existed after October 2011 or that the balcony was unsafe to use even if they did exist after that date.

For all of these reasons, I find that there is insufficient evidence to conclude that the Tenants lost the use of a balcony in any significant way due to the Landlord's failure to complete repairs to it within a reasonable period of time.

### Conclusion

The Tenants' application is 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: July 23, 2012.

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Residential Tenancy Branch