



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, RP, FF, O

### Introduction

This hearing was convened by way of conference call in repose to the tenants application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to make repairs to the unit, site or property; and to recover the filing fee from the landlords for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

The address contained on the application for the tenants and the landlords had errors. The parties did not raise any objections to the errors being corrected and the application has been amended to show the correct unit number for the dispute address.

### Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

- Are the tenants entitled to an Order for the landlord to repair the unit, site or property?

### Background and Evidence

Both parties agree that the tenants moved into a unit in this fourplex in 2008 and moved to this unit on November 01, 2009. A new tenancy agreement was entered into on November 01, 2010 for a fixed term tenancy. The tenancy has now reverted to a month to month tenancy. Rent for this unit is \$1,000.00 per month and is due on the last day of each month in advance.

The tenant (PI) testifies that they have lost their quality of life due to the harassment of the landlord and the landlord's failure to deal with the cockroaches in the unit. PI testifies that that they have continually asked the landlord to deal with the cockroach problem and have put it in writing to the landlord. PI testifies that the landlord first brought it to the tenants attention in January, 2012 and informed the tenants that the other tenants next door has brought the cockroaches with them when they moved in and the tenants had better get some Raid. PI states the landlord was fully aware of the problem and from February, 2012 the tenants started asking the landlord to do something about the problem as it did not go away.

PI testifies that the landlord has now made it uncomfortable for the tenants to live in their unit and keeps telling the tenants to move if they don't like the bugs. PI testifies that he formally asked the landlord in writing in June, 2012 to deal with the cockroaches by July 09, 2012. When the tenants gave this letter to the landlord the landlord simply said "or else".

Both parties have provided invoices from the exterminator company who were called to the fourplex to deal with bugs. The first invoice is dated August 05, 2011 and dealt with other bugs present in the fourplex but no cockroaches were identified at that time.

Another visit by the exterminators was conducted to the neighbours unit on July 10, 2012 and shows that no cockroaches were observed. The tenants have provided photographic evidence of a number of cockroaches and other bugs caught on traps in their unit.

The landlord testifies that that he told these tenants that the other tenants had brought cockroaches into the building in February, 2012 and the landlord found cockroaches in three of the four units. The landlord testifies that he had to give the other tenants the opportunity to eradicate the cockroaches before he took steps himself. The landlord testifies that the other tenants said they would not agree to this as the cockroaches were there when they moved in. The landlord agrees that he brought the exterminators in to the units in July, 2012 and gave the tenants a notice to inform them that he would be accompanying the exterminators in their unit. The landlord testifies that the exterminators are coming back again the day after the hearing to do a follow up visit and because of altercations between the tenants and landlord the landlord has had to ask the police to accompany him to the tenants unit.

The tenants' testify that they have suffered verbal harassment from the landlords girlfriend directed at them and their children. The tenants' testify that the landlord has served them constant breach letters every day since they sent the landlord the letter sometimes as many as three or four a day. The tenants' testify that the landlord has also been trying to rent their unit as they found advertisements for their unit.

The landlord testifies that the tenants informed him of the advertisements and he asked his girlfriend to go on line and check. The landlord testifies that they did find some advertisements but these were posted when the tenants rented the unit and have continued to stay on line. The landlord states he was not aware of this as his telephone number has changed and he did not receive any calls for the unit. Some of the advertisements could not be removed as they had lost the code and they could not go on line and delete them.

The landlord testifies that he has served the tenants breach letters as he has recently been letting things slip and has decided now to enforce the tenancy agreements in place and the rules of the fourplex. The landlord testifies that the tenants have harassed potential purchasers of the fourplex and the exterminator and the tenants children have been seen climbing on the fence, gates and cars and have been sitting on the driveway. Breach notices were given concerning this as the landlord was concerned for the tenants' children's safety and his building. The landlord denies that his girlfriend has harassed the tenants or their children and states that he is no longer with that girlfriend.

The tenants' testify that the landlord has failed to repair a gutter at the front and back of the house which is leaking. The tenants state they are worried this will cause flooding in their unit in the fall if it is not repaired now. The tenants testify that when they rented this unit they had access to the whole back yard. The landlord has now reduced their access to the yard by half as the landlord has put a gate and fence up across the yard. The tenants testify that the landlord has also put a lock on a gate the tenants used to use to go to the park. The tenants seek an order for the landlord to repair the gutters and to remove the gate and lock.

The landlord testifies that the gutter was removed when the new shingles went up on the roof. The tenants have a covered poach so do not get wet from any leaking water and the gutters will be replaced in the next month.

The landlord testifies that he had to put a fence up between the duplexes due to the fights between the tenants' children and with the children taking each other's toys. The landlord testifies that he had to put a lock on the gate between the duplexes as this tenant informed the landlord that the children were swinging on the gate and it was hitting the tenants' window. The landlord states that both sides of the duplex now have their own backyard. The landlord testifies that he had to put a lock on the other gate to prevent a previous tenant from returning to the duplex but that lock was removed a few months ago.

Analysis

With regard to the tenants claim for compensation due to the landlords failure to deal with the cockroaches for six months; I have considered all the evidence before me, including the sworn testimony of both parties. The parties agree that the landlord was aware of the cockroach problem in either January or February, 2012 and the landlord agrees he did not deal with the problem until July, 2012. A landlord has an obligation to ensure the rights of his tenants are protected. A landlord is responsible for insect control and by the landlords own admission these tenants were not to blame for the cockroach infestation. Had the landlord taken timely steps to deal with the problem when he was first made aware of the problem the tenants would not have endured this insect infestation for six months of their tenancy. Consequently, I find the tenants are entitled to be compensated for living with this problem to the sum of \$250.00 per month for six months to a total sum of **\$1,500.00.**

With regard to the tenants claim that they have suffered a loss of enjoyment of their rental unit due to constant harassment by the landlord and the landlords girlfriend; the tenants testify that the landlord has continually served the tenants with breach letters. It is my decision that the landlord is entitled to serve tenants with breach letters as frequently as the landlord sees fit if the landlord finds the tenants are breaching the terms of the tenancy agreement. The landlord must be aware however that any reason given on a breach letter contains information that is a breach of the tenancy agreement and is not vexatious. The tenants have provided no evidence to show that the landlord's girlfriend has harassed the tenants or the tenants' children and when it is just one parties word against that of the other then the burden of proof is not met. I further find the landlords explanation concerning the advertisements to be reasonable as these advertisements presented in evidence do have a different telephone number and do not show the year they were posted. Consequently I find the tenants have not provided sufficient evidence to show that the landlord has breached the covenant of quiet enjoyment and this section of the tenants claim is dismissed.

With regard to the tenants claim for repairs to the unit, site or property; The landlord agrees that he did not replace the drain pipe after the shingles were replaced on the roof. The tenants argue that this could cause problems in the fall to their unit if they get rain as the rain will flood their unit. The landlord agrees that the drain pipe has not been replaced and states it will be replaced within a month. I HEREBY ORDER the landlord to ensure the drainpipe is in place to prevent any fear of flooding into the tenants unit before the end of August, 2012.

With regard to the fence and gate; I direct the parties to s.27 of the *Act* which states:

**27** (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) 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.

While the use of the yard is not considered essential to the tenants' use of the rental unit as living accommodation the tenants did rent this unit with full use of the whole yard and this use has now been restricted by the landlord to half of the yard. While the landlord's intentions in restricting the yard may be honourable, the landlord is not entitled to restrict the yard without giving the tenants 30 days written notice in the approved form and has not reduced the tenants rent to compensate the tenants for this

loss of facility. Consequently, I HEREBY ORDER the landlord to reinstate the use of the whole yard for the tenants or comply with s. 27(2)(a) and 27 (2)(b) of the *Act*.

As the tenants have been partially successful with their claim I find the tenants are entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

### Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,550.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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: August 02, 2012.

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Residential Tenancy Branch