



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, RR, FF

### Introduction

This hearing dealt with the tenants' applications pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover their filing fees for this application from the landlord pursuant to section 72 (i.e., \$50.00 for the lead application RTB File ##### and \$25.00 for each of the remaining 18 joined applications).

The landlord and four of the nineteen tenants in this rental building who filed similar applications for dispute resolution attended the hearing. One of these tenants acted as an agent for another tenant who was unable to attend. Tenant BM testified that the tenants' dispute resolution hearing packages were sent to the landlord by courier on or about June 27, 2012. The landlord's Managing Partner (the landlord) confirmed that he received a copy of the tenants' dispute resolution hearing packages by courier in late June or early July 2012. I am satisfied that the landlord was served with the tenants' applications for dispute resolution.

At the hearing, the landlord confirmed that he had received a copy of Tenant BM's written evidence. The tenants in attendance (the tenants) confirmed that they had received the landlord's written and photographic evidence package sent on August 27, 2012, two days before this teleconference hearing. The tenants did not request more time to consider the landlord's written and photographic evidence package and were prepared to proceed with this hearing. As no objections were raised by the tenants, I have taken the landlord's written and photographic evidence into consideration.

At the hearing, the landlord requested the dismissal of the applications for the 15 tenancies not represented directly at this hearing. The landlord also questioned the extent to which Tenant BM, the principal tenant in the current application, could act on behalf of the remainder of the tenants in this application.

At the hearing, I denied the landlord's request to dismiss the applications from those tenants who were not directly represented at this hearing. I noted that the applications were identical but for the differences in tenant names and unit numbers in this rental building, were initiated at the same time, and were clearly based on the same arguments as were set forth in Tenant BM's oral and written evidence. In rejecting the landlord's request to dismiss 15 of the applications, I note that the *Act* allows me to make a decision on any application on the basis of oral and written evidence received that has a bearing on the matters before me. In this case, the tenant's applications and the landlord's written evidence addressed issues that enable me to consider all of the applications before me. I also note that the landlord's written evidence was a response to all 19 of the virtually identical applications submitted by the tenants.

The landlord also questioned the authority of the agent to act on behalf of Tenant JB. In doing so, the landlord noted that the tenant/agent had applied for dispute resolution with her co-tenant and received a reduction in her monthly rent and a monetary award in a previous decision I issued on May 16, 2012. A copy of that decision was entered into written evidence by Tenant BM and referred to in the Details of the Dispute section of each of the other eighteen applications for dispute resolution before me.

I recognize the landlord's concern that the agent appears to have been instrumental in alerting other tenants in this rental building of the outcome of her application for dispute resolution and in encouraging them to file their applications. Whether or not that was the case, this does not preclude her from acting on behalf of one of the other tenants in the building who was unavailable to attend this hearing. I accepted the agent's undisputed sworn testimony that Tenant JB had given her authority to act on her behalf as her agent for the purposes of pursuing his application for dispute resolution.

#### Issues(s) to be Decided

Are the tenants entitled to a monetary award for losses arising from their loss of services or facilities agreed upon in the residential tenancy agreement but not provided by the landlord? Are the tenants entitled to a reduction in their rent for services or facilities agreed upon in the residential tenancy agreement but not provided by the landlord? Are the tenants entitled to recover their filing fees from the landlord?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous petitions, letters and documents, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings are set out below.

Each of the 19 tenants in the current applications referenced my May 16, 2012 decision in the following identically worded Details of the Dispute they included in their applications for dispute resolution:

*Landlord failed to repair and eventually closed hot tub facility without reducing tenant rent. We are seeking a reduction of \$30 per unit, per month, retroactive 21 months until such time as the facility is repaired. Refer to decision of RTB file #789528.*

Tenant BM entered into written evidence a copy of my May 16, 2012 decision regarding dispute resolution hearings that occurred on April 13, 2012 and May 15, 2012. In that decision, I allowed the tenants to reduce their monthly rent by \$30.00 until such time as the landlord had either repaired the hot tub or replaced it with a common use facility for the tenants in this building in the former hot tub area. I also allowed the tenants a retroactive monthly rent reduction of \$30.00 per month for the 21 months from September 1, 2010 until May 1, 2012, the date of their last monthly rent payment prior to this decision. This resulted in a retroactive rent reduction of \$630.00 for that tenancy.

Tenant BM also submitted photographs of the sauna and some background material regarding the tenants' claims that the landlord withdrew a large hot tub from the package of services and facilities provided to tenants in this building. The landlord did not dispute Tenant BM's assertion that the hot tub has been closed since April 2010.

Tenant BM entered into written evidence copies of letters and notices regarding the process whereby the nineteen tenants filed the current applications for dispute resolution. Tenant BM also submitted an undisputed copy of an August 16, 2012 letter from an individual who was the Resident Manager of this rental property from 1997 until 2008, and was the Assistant Manager of the property for five years prior to that time period. In his letter, this individual stated that:

*...During my years at the S, the hot tub was extremely well used by all residents, some using the facility on a daily basis... The hot tub facility was advertised as a service S offered its residents and was a selling feature for prospective residents. It is sad that the repairs were not made to the hot tub and that this neglect has caused the closure to this well used facility.*

The landlord's late written evidence included photographs of the landscaping, pool and hot tub. The landlord also included an eight page table that the landlord claimed was a summary of survey information obtained primarily in July 2012 (after my previous decision was issued) with respect to the number of times that the various tenants in the building used the hot tub. The agent for Tenant JB disputed the accuracy of the

information in the landlord's survey, noting that Tenant JB had maintained that he had used the hot tub more than that shown by the landlord in the landlord's survey.

The landlord's August 27, 2012 letter in response to the 19 applications read in part as follows:

*The hot tub was taken out of service due to water leak concerns, environmental, safety and health related issues as well as building condition concerns... The hot tub is not a small 'normal' hot tub but a very large 9,000 gallon pool which is well beyond the size of any similar amenity that might be provided in any other complex that we are aware of...*

*Due to the difficulties in dealing with the remediation of the hot tub and the related health and liability concerns, the landlord closed the hot tub and considered a project to convert the hot tub room into an exercise room, however the project was delayed due the residential manager requiring extensive treatment... and ultimately succumbing to the disease in August 2011...A previous structural engineer did not complete the work on a timely basis. Analysis of the economic viability of this conversion is underway with the receipt of the structural plans from the structural engineer recently received...*

In addition to a number of other considerations of limited relevance raised in the landlord's written evidence, the landlord's August 27, 2012 letter maintained that the average rent levels of the tenants who applied for dispute resolution "is well below the current market rent levels for their units, in many cases \$700 to \$800 per month below." The landlord asserted that current market rents in this building are in excess of \$3,000.00 per month. The landlord provided undisputed evidence that 13 of the tenants pay less than \$2,300.00 in monthly rent with the balance ranging from \$2,322.00 to a high of \$2,850.00. The landlord noted that the tenants in units 1 and 24 were vacating the rental unit this month and the tenant in unit 11 had rented the premises after the hot tub was closed "with no undertaking either verbally or in writing to either repair it or offer an alternative amenity other than the extensive grounds and gardens, the swimming pool and the sauna."

At the hearing, the landlord acknowledged that the hot tub had deteriorated over time. He said that the landlord tried to convert it to an exercise room. He said that there had never been any intention to inconvenience the tenants in this building. He testified that the landlord's surveys showed that there were few frequent hot tub users. Although he did not dispute that the hot tub was part of the tenancy agreement for most of the tenants, he did not believe that the tenants should be entitled to any retroactive rent reduction.

### Analysis

The tenants' application for rent reduction was made in accordance with the following provisions of section 65 of the Act which allows me to make an order regarding past and future rent:

**65** (1) *Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:...*

*(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;...*

The landlord's obligations to maintain and repair facilities in a rental property are set out in section 32(1) of the Act which reads in part as follows:

**32** (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

*(a) complies with the health, safety and housing standards required by law,...*

Section 27 of the Act establishes the basis for a landlord to terminate or restrict services or facilities with respect to a tenancy:

**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.*

I find that the landlord's closure of the hot tub has not contravened either section 27(1)(a) or (b) of the *Act*. I find that the hot tub is not an obligatory service or amenity.

Although I realize that some of the tenants who participated in this hearing wanted the hot tub repaired and restored, they did not provide sufficient evidence to contradict the landlord's claim that the hot tub may not be reparable in a safe and healthy way. Section 27(2) of the *Act* allows a landlord to terminate a service or facility provided during a tenancy as long as it is not a material term of the tenancy. While the landlord did notify tenants in the rental complex of the pending closure of the hot tub for repairs, the landlord did not reduce the rent in an amount equivalent to the reduction in value of the tenancy agreement resulting from the closure of the hot tub. As such, I have considered whether the tenants in the current applications have demonstrated their entitlement to an order pursuant to section 65(1)(f) of the *Act* with respect to their past and future rent.

In assessing their claims, I first note that the party applying for dispute resolution bears the responsibility of demonstrating entitlement to a monetary award. It is not enough to repeat wording supplied by another tenant, sign an application for dispute resolution, and obtain the same outcome as that provided by a Dispute Resolution Officer on an earlier application for dispute resolution. Affixing a Residential Tenancy Branch decision number and requesting the same outcome is not sufficient to demonstrate entitlement to a monetary award or a reduction in monthly rent. Although attaching a copy of that decision to an application for dispute resolution is preferable to simply citing the decision number, this too does not demonstrate entitlement to a monetary award or a reduction in monthly rent. Each circumstance needs to be considered on its own merits and on the basis of the evidence supplied by the parties to a dispute.

In this case, it appears to me that many of the tenants in the current applications assumed that they were automatically entitled to the same type of relief provided to the two tenants whose May 16, 2012 decision appears to have formed the basis for the 19 applications before me. Other than Tenant BM, they did not file any written evidence to demonstrate how they were personally affected by the landlord's decision to close the hot tub in their building. In fact, no one attended to provide sworn oral testimony for 15 of the 19 joined applications before me. Tenant BM and the others who either attended or had an agent act on their behalf did provide sworn oral testimony to support their applications.

#### Analysis – Application by Tenant in Unit 11

I will first deal with the application by the tenant in Unit 11. As outlined above, the landlord provided undisputed written evidence that the tenant in Unit 11 rented her unit

after the hot tub was closed and without any undertaking that the hot tub would be repaired or an alternate amenity would be provided. The landlord's written evidence also showed that this tenant moved into her rental unit on February 1, 2010, before the landlord officially closed the hot tub in April 2010. However, I understand that the hot tub had been in disrepair and had not been functioning properly for a number of months prior to the landlord's decision to close this facility. Without any information from the tenant in Unit 11 to dispute the landlord's oral and written evidence, I find on a balance of probabilities that it was more likely than not that the landlord did not commit to provide access to a functioning hot tub to the tenant in Unit 11 as part of the services and facilities that the landlord agreed to convey to the tenant when she entered into her residential tenancy agreement. By that time, the landlord had been encountering serious problems with maintaining and repairing the hot tub and was in the process of making a decision regarding the long term future of that facility. As I do not accept that the landlord committed to provide the hot tub facility as part of the residential tenancy agreement to the tenant in Unit 11, I dismiss her application for dispute resolution without leave to reapply. As she has been unsuccessful in her application, she bears responsibility for her filing fee for her application.

Analysis – Applications from the Tenants in Units 13, 20, 25, 27, 32, 49, 66, 71

These eight tenants (the eight tenants) did not participate in the scheduled August 29, 2012 teleconference hearing and did not supply any written evidence with respect to the frequency of their hot tub usage. Their only submission was their identical information in the Details of the Dispute section of their application for dispute resolution.

The landlord's written evidence confirmed that each of the eight tenants entered into their residential tenancy agreements prior to the permanent closure of the hot tub facility in this building. The landlord entered into written evidence an 8 page document outlining the results of surveys of hot tub use of the tenants throughout the rental building. The landlord reported that some of the eight tenants had made occasional use of the hot tub facility. However, the landlord provided undisputed written evidence that none of these individuals reported use exceeding once per week. The landlord's evidence revealed that some of these tenants rarely if ever used the hot tub when it was in operation. In the absence of any evidence from these tenants to the contrary, I find that this group of tenants has not met the standard of demonstrating that the landlord's withdrawal of the hot tub has led to a devaluation in the worth of their tenancy. Consequently, the eight tenants have provided little evidence that they have experienced any real loss as a result of the landlord's decision to close the hot tub facility. As such, I dismiss their applications for a reduction in monthly rent and their applications for a monetary award for the retroactive loss of the hot tub facility without

leave to reapply. As the eight tenants have been unsuccessful in their applications, they are not entitled to recover their filing fees from the landlord.

Analysis – Applications from Tenants in Units 67, 7, 15 and 17

Based on the evidence before me, I accept that the landlord has withdrawn a facility that was part of the original package of services and facilities that the landlord committed to provide to the above four tenants. The tenants in the above rental units (the four tenants) were represented at this hearing. They or their agent presented sworn oral testimony or written evidence to outline their usage of the hot tub and to demonstrate that they attached worth to their access to this portion of the bundle of services and facilities provided by the landlord when they entered into their tenancy agreements. For example, the tenant in Unit 17 testified that his wife used the hot tub “all the time” and that his family experienced a “huge loss” when this facility was closed. The tenant in Unit 7 gave sworn testimony that access to the hot tub was the main reason that he and his wife moved into this rental building many years ago. He testified that he and his wife had been frequent users of the hot tub, using it almost every day when it was in operation. He said that since the hot tub was closed they have had to travel to other facilities that have this amenity at U.B.C. and in Kerrisdale, at some distance from their rental unit. The agent for the tenant in Unit 15 noted that the hot tub was used year-round while the landlord’s outdoor pool is closed much of the year. For his part, the tenant in Unit 67 provided both written and oral evidence to support his application.

Other than the copy of my previous decision on a similar application by two tenants in this building which is not binding on the matters before me, the four tenants did not submit specific evidence with respect to the loss in value to their tenancy caused by the landlord’s closure of the hot tub facility. As the landlord acknowledged that the hot tub has not been operating since April 2010, I recognize that there has been some loss in the value to the tenants who submitted the current applications, albeit one that is very hard to measure. I find that the loss in value for the four tenants resulting from the landlord’s closing of the hot tub is \$30.00 per month. I order that the four tenants reduce their monthly rent commencing in October 2012 by \$30.00 per month until such time as the hot tub is either repaired and hot tub use is restored or some other tenant use (e.g., fitness studio) is made of the area formally occupied by the hot tub. I order that these tenants’ rents resort to their normal monthly level in the month following the reopening of the hot tub or the month following the opening of a new common use area for tenants in the building in the former hot tub area.

The landlord did not dispute the claims by some of the tenants who participated in this hearing that for some time before April 2010 the hot tub was not working properly on a regular basis. Considerable work was necessary after the hot tub was closed in April



2010 to determine whether repairs were feasible. By September 2010, the landlord should have been in a position to either repair the hot tub or replace it with another common use facility for the tenants in this area of the complex. For that reason and pursuant to section 65(1)(f) of the Act, I am ordering a retroactive rent reduction of \$30.00 per month to the four tenants for the period from September 1, 2010 until September 1, 2012. This results in a monetary award of \$720.00 (i.e., 24 months @ \$30.00 per month = \$720.00). In arriving at this monthly rent reduction, I have also taken into account the tenants' claim that the hot tub was not working properly for months before it was eventually closed and that the landlord also closed the saunas in the complex for a lengthy period for repairs/renovations. The \$30.00 monthly rent reduction is designed to provide the four tenants with a rent reduction for all of these reductions in services and facilities that the landlord committed to provide when they entered into their tenancy agreements. As the four tenants have been successful in their application, I also find that they are entitled to recover their filing fees from the landlord. This results in a total monetary award of \$770.00 for retroactive rent reduction and recovery of the tenant's (\$50.00) filing fee for the tenant in Unit 67 and a total monetary award of \$745.00 for retroactive rent reduction and recovery of the tenants' (\$25.00) filing fee for the tenants in Units 7, 15 and 17 .

To implement the monetary award of \$770.00 to the tenant in Unit 67, I order him to reduce his October 2012 rent payment by an additional \$770.00 (i.e. \$800.00 in total including the \$30.00 rent reduction for October 2012). To implement the monetary awards of \$745.00 to the tenants in Units 7, 15 and 17, I order these tenants to reduce their October 2012 rent payments by an additional \$745.00 (i.e. \$775.00 in total including the \$30.00 rent reduction for October 2012).

On November 1, 2012, and until such time as the landlord has either repaired the hot tub or replaced it with a common use facility for the tenants in the former hot tub area, I order that the tenants in Units 67, 7, 15 and 17 are allowed to reduce their monthly rents by \$30.00.

#### Analysis – Applications from Tenants in Units 1, 10, 24, 58, 64 and 65

Although the landlord confirmed that the hot tub has not been functioning since April 2010, the above-noted six tenants (the six tenants) provided little evidence either written or oral to support their entitlement to a reduction in rent. The only evidence I have before me that would demonstrate that they were frequent users of the hot tub before it was closed was the landlord's written survey evidence. However, the landlord's survey leads me to conclude that this group of six tenants did in fact use the hot tub frequently before it was closed. The hot tub usage estimates for the six tenants ranged from a low of twice per week to a high of 15 times per month. On this basis, I am satisfied that this

group of tenants did in fact use the hot tub regularly. I find that the six tenants are therefore entitled to a reduction in their current monthly rent because I accept that the landlord has withdrawn a facility that was part of the original package of services and facilities that the landlord committed to provide to them.

Other than the copy of my previous decision on a similar application by two tenants in this building which is not binding on the matters before me, the tenants did not submit specific evidence with respect to the loss in value to their tenancy caused by the landlord's closure of the hot tub facility. I find that the loss in value for this group of tenants resulting from the landlord's closing of the hot tub is \$30.00 per month. I order that the six tenants reduce their monthly rent commencing in October 2012 by \$30.00 per month until such time as the hot tub is either repaired and hot tub use is restored or some other tenant use (e.g., fitness studio) is made of the area formally occupied by the hot tub. I order that these tenants' rents return to their normal monthly level in the month following the reopening of the hot tub or the month following the opening of a new common use area for tenants in the building in the former hot tub area.

Given the limited nature of the evidence presented by the six tenants, I am not satisfied that they have demonstrated entitlement to a retroactive rent reduction pursuant to section 65(1)(f) of the *Act*. I dismiss their claim for a monetary award in this regard without leave to reapply. As the six tenants were only partially successful in their applications for dispute resolution, they bear responsibility for their own filing fees.

### Conclusion

I dismiss the application from the tenant in Unit 11 without leave to reapply. The tenant in Unit 11 bears responsibility for her filing fee for her application.

I dismiss the applications for dispute resolution from the tenants in Units 13, 20, 25, 27, 32, 49, 66 and 71 without leave to reapply. They bear the responsibility for their filing fees.

I allow the applications from the tenants in Units 67, 7, 15 and 17 and order that their current monthly rent is reduced by \$30.00 as of October 1, 2012. To implement the monetary award of \$770.00 to the tenant in Unit 67, I order him to reduce his October 2012 rent payment by an additional \$770.00 (i.e. \$800.00 in total including the \$30.00 rent reduction for October 2012). To implement the monetary awards of \$745.00 to the tenants in Units 7, 15 and 17, I order these tenants to reduce their October 2012 rent payments by an additional \$745.00 (i.e. \$775.00 in total including the \$30.00 rent reduction for October 2012).

On November 1, 2012, and until such time as the landlord has either repaired the hot tub or replaced it with a common use facility for the tenants in the former hot tub area, I order that the tenants in Units 67, 7, 15 and 17 are allowed to reduce their monthly rents by \$30.00. The landlord is entitled to annual rent increases based on this monthly rent in accordance with the *Act*. Should the landlord repair the hot tub or replace it with a common use facility for the tenants in the building in that area, I order the monthly rent for the above four tenants to increase by \$30.00 in the month following the opening of the hot tub or the new facility in the hot tub area.

I allow the tenants in Units 1, 10, 24, 58, 64 and 65 (the six tenants) to reduce their monthly rent by an amount of \$30.00 effective October 1, 2012. The landlord is entitled to annual rent increases based on this monthly rent in accordance with the *Act*. Should the landlord repair the hot tub or replace it with a common use facility for the tenants in the building in that area, I order the monthly rent for these six tenants to increase by \$30.00 in the month following the opening of the hot tub or the new facility in the hot tub area. I dismiss the six tenants' applications for a retroactive monetary award pursuant to section 65(1)(f) of the *Act* without leave to reapply. The six tenants bear responsibility for the filing fees for their applications.

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: September 07, 2012

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Residential Tenancy Branch