



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the tenants' application 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; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord confirmed that both landlords received the tenants' dispute resolution hearing package sent by the tenants by registered mail on August 28, 2012. I am satisfied that the above documents were served by the tenants to the landlords in accordance with the *Act*.

### Issues(s) to be Decided

Are the tenants entitled to a monetary award for losses arising out of this tenancy? Are the tenants entitled to recover their filing fee for this application from the landlords?

### Background and Evidence

This periodic tenancy commenced on October 1, 2010. Monthly rent by the end of this tenancy was set at \$961.00, payable in advance on the first of each month. Although the tenants paid a \$470.00 security deposit for this tenancy, both parties agreed that the landlords have returned that security deposit to the tenants.

The tenants gave undisputed oral and written evidence that one of the wooden balconies in this rental building blew off in a bad storm on March 12, 2012. They maintained that the property managers of this building advised tenants in the building shortly thereafter that all balconies in the rental property were unsafe and should not be used. They entered into written evidence a copy of a May 24, 2012 Notice to All Residents advising them that repairs to the balcony were planned but delayed due to the permit process. This Notice advised residents that in the interim they should not use their balconies in this building.

The landlord testified that the tenants first gave notice that they intended to end their tenancy on May 1, 2012 because the balcony for this rental unit was no longer available for their use. The landlord gave undisputed testimony that the tenants changed their mind two weeks later and decided to remain in the tenancy. The landlord testified that on July 30, 2012, the tenants gave another notice to end this tenancy by August 31, 2012. The parties agreed that this tenancy ended by August 31, 2012.

The tenants applied for a monetary award of \$489.72 for their loss of their balcony for a period from March 12, 2012 until the end of their tenancy on August 31, 2012. They arrived at this figure by claiming that their outside balcony represented a loss of approximately 11% of their overall 835 square feet of this rental unit. They requested a reduction in rent from March 1, 2012 until August 31, 2012 in the amount of \$87.45 per month to reflect this loss of use of 11% of their rental unit. They applied this rent reduction of \$87.45 per month to a loss of their balcony for 5.6 months resulting in their claim for \$489.72 (i.e.,  $\$87.45 \times 5.6 = \$489.72$ ).

The landlord testified that the landlords took swift action to determine whether the balconies were structurally unsound. Within a week of the March 12, 2012 incident, they had obtained an opinion from a structural engineer who advised them that repairs were necessary to all the balconies in the complex. The landlord testified that this process is being conducted in phases; the work began on August 15, 2012.

The landlord also testified that the tenants' figures were incorrect. He said that the tenants' 2 bedroom suite was actually 696 square feet and that the outside balcony/deck is 63 square feet. The landlord maintained that the value of a square foot of living space within the rental unit is far higher than a square foot of uncovered deck outside the rental unit. The landlord estimated that the tenants were paying approximately 3% of their monthly rent towards the deck/balcony for the private and exclusive use of this rental unit. The landlord testified that the tenants were only paying \$28.83 towards the deck/balcony each month. The landlord also questioned the period of time that formed the basis for the tenants' claim for reduced facilities in this tenancy.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party.

Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 65(1)(f) of the *Act* reads in part as follows:

**65** (1) *...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;...*

In this case, there is no dispute as to whether a facility that was part of this tenancy agreement for the exclusive use of the tenants was unavailable to the tenants for a period of time. I find that the unavailability of the tenants' deck/balcony did result in a loss in value of the tenancy agreement and, as such, the tenants are entitled to a retroactive rent reduction in accordance with section 65(1)(f) of the *Act*.

There was conflicting evidence with respect to the proportion of the tenants' monthly rent that resulted from the inclusion of the deck/balcony in the bundle of facilities and amenities provided by the landlord as part of this tenancy agreement. There was also a dispute as to the period of time to which any rent reduction should be applied.

I find that the tenants' oral and written evidence attempted to equate the value of an uncovered deck/balcony with all other interior areas of their rental unit. On a balance of probabilities, I find it highly unlikely that the monthly rent paid by the tenants for a 63 square foot uncovered balcony would be similar to an equivalent area of the interior living area of this two bedroom rental unit. For this reason, I find that the tenants' estimate that they were paying \$87.45 each month for the use of the balcony is grossly inflated. Although the landlord also provided little supporting evidence for his estimate of the monthly rent attributable to the balcony, I find that the landlord's estimate was much more reasonable than the claim submitted by the tenants. I find that the monthly value of the balcony within the tenancy agreement was \$28.83, the amount cited by the landlord.

Turning to the period of eligibility for this claim, I find that the only written evidence produced by either party with respect to a landlord advisory to discontinue using balconies in this rental building was the landlord's May 24, 2012 Notice to All Residents. However, given the incident of March 12, 2012, I do not find it unreasonable that residents would have discontinued using their balconies at some point before the landlord's issuance of the May 24, 2012 Notice.

There is no evidence before me that the March 12, 2012 incident resulted from a lack of ongoing maintenance of the balconies in this rental building. Once this incident occurred, the landlords would have needed some time to establish the magnitude of this problem and whether repairs or replacement of these facilities were required. Based on the landlord's undisputed evidence, it appears that prompt measures were taken to retain a structural engineer to consider this issue. After having received the engineer's opinion, the landlord would have needed time to consider options on how best to proceed and to obtain information on how to secure the necessary permits. For these reasons, I find that the tenants' entitlement to a monetary award for reduced facilities would not take effect until May 1, 2012. I believe that this date also strikes a balance between the March 12, 2012 incident and the May 24, 2012 Notice to All Residents, by which time the residents of this building had clearly been advised by the landlord to discontinue use of the balcony until repairs had been completed.

For the above reasons, I find that the tenants are entitled to a monetary award of \$28.83 for the loss in value of their tenancy for each of the last four months of their tenancy. This results in a monetary award of \$115.32 ( $4 \times \$28.83 = \$115.32$ ).

As the tenants have been partially successful in their application, I allow them to recover \$25.00 of their filing fee from the landlords.

#### Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$140.32 (i.e.,  $\$115.32 + \$25.00 = \$140.32$ ), an amount which enables them to recover a portion of their rent paid during this tenancy and a portion of their filing fee from the landlords.

The tenants are provided with these Orders in the above terms and the landlords must be served with a copy of these Orders as soon as possible. Should the landlords fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: November 15, 2012

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Residential Tenancy Branch

