



# 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 tenant's Application for Dispute Resolution seeking a monetary order.

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

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 27, 28, 32, 67, and 72 of the *Act*.

### Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on May 3, 2011 for a 1 year and 1 day fixed term tenancy agreement beginning on June 1, 2011 that converted to a month to month tenancy on June 2, 2012 for a current monthly rent of \$1,700.00 due on the 1<sup>st</sup> of each month.

The parties agree that in July 2013 the landlord began work on re-roofing the residential property and as a result of this work the outside deck accessed through the tenant's rental unit was dismantled.

The parties also agree that the work is almost nearly completed. The landlord submits the only work left to be completed is the installation of railings on the tenant's new deck. While the landlord was not sure of the specific date the project will end they hope it is within the next couple of weeks.

The landlord submits that work that began resulted from the need to replace the roofing as the property is approximately 45 years old. The landlord also notes that the removal

of the deck was by no means intended as a permanent removal and in fact the tenant will enjoy a better quality deck than he previously had.

The tenant submits that based on the square footage of his rental unit and his adjoining deck and balcony totals 1293 square feet. The tenant submits that as a result of this work he had lost 25.75% of the square footage of his rental unit and should be compensation by an amount equivalent to a reduction in rent of the same percentage amount or \$437.75 per month. As the construction has been underway for 4 months the tenant seeks a total compensation amount of \$1,751.00.

The landlord submits that the rent for this unit does not take into account the deck or balcony or the increased square footage of the entire unit by including the deck and balcony areas.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 27 of the *Act* states a landlord must not terminate a service or facility if it is essential to the tenant's use of the rental unit or its provision is a material term of the tenancy agreement. The Section goes on to state that a landlord may terminate or restrict a service or facility by other than one noted above if the landlord gives the tenant 30 day's notice and reduces the rent by an amount equivalent to the reduction in value of the tenancy agreement.

While I accept the landlord did not calculate the rent for the unit based on the exceptional deck that is provided I find that the deck itself is a facility that this tenant has enjoyed as a result of the tenancy agreement. As such, I also find that for the temporary period of July 2013 to October 2013 the landlord has restricted the use of that facility.

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29; and use of common areas for reasonable and lawful purposes, free from significant interference.

Section 32(1) of the *Act* requires a landlord to 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 for the age, character and location of the rental unit make it suitable for occupation by a tenant.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental units suitable for occupation which warrants that the landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building envelop would deteriorate occupant comfort and the long term condition of the building.

Residential Tenancy Policy Guideline 6 stipulates that “it is necessary to balance the tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.”

I accept the landlord’s evidence and testimony that they had no intention of permanently dismantling the deck and that the work was only required as the result of the work that needed to be completed on the roof of the complex.

As a result of the work and the tenant’s inability to use the deck that accompanies the rental unit, I find it undeniable that the tenant suffered a loss of quiet enjoyment, and therefore a subsequent loss in the value of the tenancy for that period. As a result, I find the tenant is entitled to compensation for that loss.

However, I am not satisfied that the value of that loss is directly related to the square footage of the rental unit. A rental unit that is suitable for occupancy by a tenant includes the requirement to have a kitchen; bathroom; living space; a space to sleep and in some cases exterior spaces and each of these components lend to the value of the rental unit.

I find the value of the loss of use of a deck and balcony when compared to, for example, the loss of use of a kitchen cannot be based on square footage because kitchens in rental units tend to be one of the smaller spaces in the unit and in the case of a rooftop deck, the deck is likely a substantially larger space.

Therefore by the terms used by the tenant the loss of the deck would be a more valuable loss than that of the kitchen and yet the tenant would not be able to store or cook food; do dishes or clean if he was without a kitchen; the same holds true in the case of a bathroom which is likely the smallest space in a rental unit aside from closets.

I find a more reasonable estimate of the loss in value of the tenancy is 10% of the rental amount or \$170.00 per month. I find the tenant is entitled to this compensation for the months of July, August, September, and October 2013. As the work is nearly completed I will not grant further compensation in this decision, however I note that

should the final stages restrict the tenant's usage for an unreasonable length of time he may submit a new Application for further compensation.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$730.00** comprised of \$680.00 compensation and the \$50.00 fee paid by the tenant for this application.

I order the tenant may deduct this amount from a future rent payment in satisfaction of this claim, pursuant to Section 72(2)(a).

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: October 29, 2013

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Residential Tenancy Branch