



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Middlegate Developments Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing was convened by way of conference call in response 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; and to recover the filing fee from the landlords for the cost of this application.

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

### Issue(s) to be Decided

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

### Background and Evidence

The parties agree that this tenancy started on September 01, 2011 on a month to month basis. Rent for this unit is \$1,680.00 per month plus parking fees. Rent is due on the last day of each month in advance.

The tenant MB gives verbal evidence for the tenants and testifies that the tenants moved to this unit as they are undergoing a construction project on their home and wanted to live somewhere free from construction. The tenant testifies that they were given no idea of the up and coming disruptions. On September 21, 2012 the landlord held a barbeque meeting for all the tenants to inform them about the up and coming work to be done on the decks and siding to their units. A little later some ladders appeared and some initial work began to grind off the decking. On October 13, 2012 a tarp was erected over the front of the building obscuring the tenants' view of the city which was something the tenants had paid for when renting this unit. There was also scaffolding tower in place obscuring the view. The tenant testifies that during this time their unit was like a cave without windows except in the bedroom.

The tenant testifies that on October 30, 2012 the tenants started to experience toxic fumes from the substances used on the deck. The tenant did some investigation and found out that these chemicals should not have been used without protective gear yet the winds blowing up the hillside blew these fumes into the tenants units. All other affected tenants also complained about the fumes causing headaches and nausea and one pregnant tenant had to be taken to hospital. The tenant testifies that when these chemicals were being applied the landlord should have given the tenants alternative accommodation.

The tenant testifies that the landlord sent out a letter to the tenants on November 26, 2012 which stated that the final coat on the deck will be applied on November 27, 2013. However the tenant testifies that this was never applied and the work closed down for the winter and reopened on April 24, 2013. At this time the tenant agree their unit was

no longer covered in a tarp but the fumes were still present when neighbours were having the work done and the tenants had to again evacuate their unit.

The tenant testifies that they received a notice from the landlord asking permission for the workers to do work on the deck and access it through the tenants' unit. The tenants found this to be unacceptable having workers coming through their unit and declined permission. The tenant testifies that they were informed early in May, 2013 that they could use their patio again however the work done is incomplete and of a substandard condition. The tenant testifies that the resident manager told the female tenant that if they puncture the membrane of the patio they will be out of there. The tenant testifies that they also received a stern letter from the owners informing the tenants that they cannot operate a business from the unit. The tenant testifies they are not operating a business but rather overseeing their own renovation work on their home.

The tenant testifies that they have lost 17 percent of their living space with the patio being under construction for seven months until they were told they could use it again. The tenants have calculated this to be a loss of use and have calculated this in accordance to the rent paid of \$1,680.00 and the loss being calculated at \$292.32 a month X seven months to a total sum of \$2,046.24.

The tenants also seek compensation for the loss of their view and privacy for two months the tarp was in place and for the workers going up and down the scaffolding tower outside their unit. The tenants testifies that they have calculated this loss at a value of half a month's rent for two months to a total amount of \$1,680.00.

The tenants seek further compensation for having to leave the unit for a total of six days due to the fumes. When asked which six days this related to the tenants could only recall five days which consisted of October 30 and 31, 2012, May 14, 2013 May 30, 2013 and June 05, 2013. The tenants are not seeking alternative living expenses as they testify they camped out at their construction property, but do seek to recover rent

paid for these days. The tenants have calculated rent at \$56.00 per day for five days to a total amount of \$280.00.

The landlord's agent RK disputes the tenants' claims. RK testifies that the tarp went up over the tenants' side of the building on October 13, 2012 and came down on November 20, 2012 as the job was halted for the winter. RK testifies that the tenants' deck has been completed in that time frame with the exception of the new siding which was due to go up from April, 2013. This did not prevent the tenants from using their deck. The tenants put their patio furniture back on the deck and also hung some Christmas decorations. The landlord therefore disputes that the tenants could not use the deck for seven months.

RK testifies that in the spring, tarps were put up again on other decks for shorter periods and Vancouver Coastal Health Authority came out about the chemicals used and advised the tenants about dealing with the fumes. The tenants were sent a letter asking permission to access the deck through their unit but as they refused permission the workers used ladders from the outside. The tenants only lost the use of their deck between October 13 and November 20 and also only lost their view for this period of time but it was work that needed to be done.

RK testifies that the tenants did inform her about not being able to stay in the unit on a few occasions and it was recommended that they used their kitchen fans and they were offered other fans to blow the air and fumes out of the unit. The tenants declined this offer.

The tenant cross examines RK and asks if RK mentioned to the female tenant that they would be out of there if they punctured the membrane on the deck. RK responds that she did mention to JB about putting patio furniture down which could puncture the membrane. The tenant asks RK which date RK offered the tenants fans as they do not recall this offer. RK responds and states she does not recall but does remember asking all tenants if they needed fans.

The tenant testifies that they were tarped in during 2012 and fans were not offered until April, 2013. The tenant disputes RK claim that they were able to use the deck and states they did put their light weight patio furniture back on the deck as it had been stored in a fire escape area and they did put up a string of Christmas lights on the railings. However the membrane had soft spots because a top layer had not been put on and this prevented the tenants using the deck.

The tenant asks RK about the contractors saying they were coming back to do a final coat however theirs has not been done. RK testifies that her understanding from the contractors was that all decks had been completed. The tenant testifies that they have seen some of the other decks and they do appear to have a top coat. However, the tenants' deck does not look the same as the contractors have not returned to do the final finish. The tenant testifies that overall the whole job is more of a patch up job and not a proper fix. The tenant testifies that they did indicate to the manager that the job was not finished.

RK testifies that the owner of the building inspected the work and signed off on it with the contractors agreeing it was finished. RK testifies she will ask the owners to go back and have another look at the tenants' deck.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to the Residential Tenancy Policy Guidelines #6 which discusses the tenants' right to quiet enjoyment of their rental unit. This guidelines states in part that

The Residential Tenancy Act and Manufactured Home Park Tenancy Act (the Legislation) establish rights to quiet enjoyment, which include, but are not limited to:

- reasonable privacy
- freedom from unreasonable disturbance,

- exclusive possession, subject to the landlord's right of entry under the Legislation, and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Part of this right to quiet enjoyment is the tenants' right to all parts of the rental property for which rent is paid and the landlord may not refuse a tenant the right to access all of the rental property. However, temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

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 find the tenants did experience a loss of use of their deck but find the tenants were able to use their deck from November 20, 2013 even if the work was not fully completed the tenants did put back there patio furniture and hung Christmas lights. While I also find the landlord has a right and responsibility to maintain the building I find the tenants are entitled to some compensation for time period they were unable to use their deck. The tenants have calculated this compensation at \$292.32 a month. I therefore find the tenants have established a claim for one month and one week to a total amount of **\$365.40** pursuant to s. 67 of the *Act*.

With regard to the tenants claim for compensation for the loss of their view and privacy; the same premises applies for this section of the tenants' claim. I am satisfied that the tarp was only in place along with the scaffolding tower from October 13 to November 20, 2012 and while I agree it is not pleasant to live under these conditions a landlord still has the right to make repairs to their property and if the tenants are temporality

inconvenienced then this does not fall under a loss of quiet enjoyment and there is no provision under the *Act* for an award of compensation to be made.

With regard to the tenants' claim that they had to vacate the unit due to fumes on at least five occasions for 24 hours. I have considered the evidence provided by the tenants and find this type of chemical can be considered to be fairly toxic causing nausea and headaches if not applied in a well ventilated area. As the tenants have complained of these symptoms due to the wind blowing the fumes back into their unit I can fully understand the tenants need to vacate the unit for periods of time. I therefore find the landlord has insufficient evidence to show that fans were provided for these tenants or that fumes were not infiltrating into the tenants' unit and consequently I find in favour of the tenants' claim for five days of rent to be recovered to the sum of **\$280.00** pursuant to s. 67 of the *Act*.

As the tenants have been partially successful with their claim I find the tenants may 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. The tenants may deduct the sum of **\$695.40** from their next rent payment when it is due to the landlord.

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: January 09, 2014

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Residential Tenancy Branch

