



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC OLC RP RR FF

### Introduction

This hearing was convened as a result of the tenants' application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The tenants applied for a monetary order for money owed of compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, to make repairs to the unit, site or property, to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, and to recover the cost of the filing fee.

The tenants and landlord "VV" (the "landlord") attended the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

At the outset of the hearing, the landlord confirmed that he received the tenants' documentary evidence and that he had the opportunity to review the tenants' evidence prior to the hearing. The landlord confirmed that the landlords did not submit documentary evidence in response to the tenants' application. I find the landlords were served in accordance with the *Act*.

### Preliminary and Procedural Matter

The hearing commenced on May 21, 2014 and was adjourned to allow additional time to hear testimony related to the remainder of the tenants' application and to consider any documentary evidence presented during the hearing. On July 17, 2014 the hearing reconvened and concluded after a combined hearing time of 109 minutes.

### Issues to be Decided

- Are the tenants entitled to a monetary order under the *Act*, and if so, in what amount?
- Have the tenants provided sufficient evidence that the landlords should be directed to comply with the *Act*, regulation or tenancy agreement?
- Have the tenants provided sufficient evidence to support a rent reduction for repairs, services or facilities agreed upon but not provided?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The fixed term tenancy agreement began on December 1, 2013 and is scheduled to revert to a periodic, month to month tenancy after December 1, 2014. Monthly rent is \$2,000.00, per month which is due on the first day of each month. The tenants continued to occupy the rental unit.

The tenants have applied for a monetary claim in the amount of \$6,701.11 comprised as follows:

Item Description	Amount claimed
Item 1. House repair reimbursement	\$1,139.99
Item 2. Removal of items from basement (storage space)	\$761.12
Item 3. Not enough garbage and recycle containers	\$800.00
Item 4. Unsightly and unsafe storage by tenants living below	\$1,600.00
Item 5. Temperature control issue between suites	\$800.00
Item 6. Unruly tenants below causing hardship to peaceful enjoyment of life	\$1,600.00
<b>TOTAL</b>	<b>\$6,701.11</b>

Regarding item 1, the tenants confirmed that there was no repair agreement in writing with the landlord, which the landlord confirmed during the hearing. As I am unable to enforce a work agreement between the parties under the *Act*, this item was **dismissed** during the hearing due to insufficient evidence, **without leave to reapply**.

Regarding item 2, the tenants have claimed \$761.12 for lack of storage space in the downstairs portion of the home. The tenants confirmed that the tenancy agreement did not define what storage space was included in the tenancy agreement. The tenants stated that they arrived at the amount being claimed for this portion of their claim by

taking \$95.14 and multiplying by eight months they have resided in the rental unit. The storage space in the common area of the lower area of the house is in dispute regarding this portion of the tenants' claim. The tenants do not believe that this lower hallway area is a common area.

The tenants provided a sample of what a 5 foot by 6 foot by 8 foot storage unit would cost on a monthly basis, which indicates \$84.95 per month plus taxes for a total of \$95.14. The tenants stated that the rental unit includes five bedrooms, each with their own closets, plus two other hallway closets, in addition to the hallway closet at issue in the lower area of the home. The landlord disputed that lower closet belongs to the tenants and stated that it is part of the shared common area of the home, shared between the upper tenants and the lower renters. The tenants' version is that the lower closet is for the exclusive use of the upper tenants and that they should be compensated as a result. The tenants did not submit photos of the hallway in evidence to support this portion of their claim.

Regarding item 3, the tenants originally claimed \$800.00, however, during the hearing reduced this portion of their claim to \$600.00 for lack of garbage and recycling containers, comprised of \$100.00 per month for a total of six months. The tenants testified that they arrived at \$100.00 per month by using the amount of \$25.00 per week where they allege that garbage and recycling has spilled over the containers and that the containers provided by the landlord were not big enough for two families renting the home, which include upper tenants and lower renters.

The parties agreed that this matter was resolved after six months, which is why the tenants reduced this portion of their claim by two months. Submitted in evidence were photos of the garbage and recycling containers. The photos show three large bins, with a bag apparently ripped open outside of one of the bins and one of the bins slightly open supporting that the bin was overfull. The tenants stated that in March 2014, the landlord added two more containers for a total of five containers, with two of the containers being smaller containers.

The tenants stated that they were told by the city officials that they were not permitted to put their own garbage containers outside. The tenants did not submit documentary evidence to support this portion of their testimony. Garbage collection is listed in the tenancy agreement as being included as part of the monthly rent.

Regarding item #4, the tenants clarified that they are claiming for seven months at \$200.00 per month for a total of \$1,400.00 versus eight months listed in their application. The tenants claimed that the renters living below them stored potato sacks

and onion sacks outside which are unsafe due to rats. The tenants referred to four photos showing the outside of the lower renters' suite in evidence. The photos are black and white and one of the photos is blurry.

The landlord testified that he did not see any onion or potato sacks and did not see a problem with what the lower renters were storing outside. The tenants confirmed that there were no photos of the rats alleged to be outside. The tenants did not provide an explanation of how they arrived at the amount of \$200.00 per month as the value of their loss for this portion of their claim.

Regarding item #5, the tenants clarified that they are claiming for six months at \$100.00 per month for a total of \$600.00 versus eight months listed in their application for temperature related issues in the rental unit. The tenants indicated that they used to control the heat in the rental unit but that they continue to find it too hot in the rental unit. The tenants indicated that they closed off the heating vents as they found it too warm in the rental unit, and that the first time they notified the landlord in writing of their complaint regarding the temperature in the rental unit was on March 17, 2014, yet they are claiming for compensation dating back to the start of the tenancy in December 2013.

Heat and electricity is not included in the monthly rent according to the tenancy agreement submitted in evidence. The tenants stated that the temperature in the rental unit ranged from 22 degrees Celsius to 25 degrees Celsius. The tenants testified that they controlled the heat in the rental unit from the start of the tenancy until March 25, 2014, until the landlord rewired the temperature control. The landlord testified that there is one control for the heat in the basement suite of the home. The tenants did not provide any witness statements or other evidence to support that it is too warm in the rental unit.

Regarding #6, the tenants clarified that they are claiming for seven months at \$200.00 per month for a total of \$1,400.00 versus eight months listed in their application for "unruly tenants below causing hardship to peaceful enjoyment of life". The tenants stated that they reached the amount of \$200.00 per month by using \$50.00 per week and multiplying that amount by four for total of \$200.00 per month. The tenants stated that they first notified the landlord in writing regarding this portion of their claim in March 2014, yet they are claiming for compensation dating back to the start of the tenancy in December 2013. The tenants referred to their document submitted in evidence which refers to accordion playing, the smell of smoke and the smell of the lower renters' cooking but did not provide specific dates or specific times related to this portion of their

claim. The landlord stated that he spoke to the lower renters about the concerned raised by the tenants in the document received March 19, 2014 on March 21, 2014.

Regarding the accordion playing, the landlord stated that he advised the renters that they cannot disturb the upper tenants and the renters agreed he would not continue.

The tenants stated that after March 21, 2014 the accordion playing continued, however no dates or times were provided.

Regarding the smell of smoke, the landlord stated on the March 21, 2014, the lower renters advised him that they do not smoke as they have two children. The tenants testified that they never saw the renters below them smoking.

Regarding the alleged cooking smell from the lower renters' unit, the landlord stated on March 21, 2014, the lower renters advised him that they do not cook curries and the landlord felt that he could not control what the lower renters cooked in the rental unit. The tenants stated that the smell coming from the lower rental unit, is "exceptionally strong" and that there was the smell of "onions and other drastic smells". The tenants also allege that the smoke detector had been set off; however, no dates or times were provided in relation to this portion of the tenants' claim. The tenants testified that the amount being claimed was reached by taking \$50.00 per week and admit that the amount was an arbitrary number they chose.

### Analysis

Based on the documentary evidence, the testimony provided during the hearing, and on the balance of probabilities, I find the following.

#### *Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable under the *Act* to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlords. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenants did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

**Item #1** – As described above, this item was **dismissed** during the hearing due to insufficient evidence, **without leave to reapply**. The tenants confirmed that there was no repair agreement in writing with the landlord, which the landlord confirmed during the hearing.

**Item #2** - The tenants have claimed \$761.12 for lack of storage space in the downstairs portion of the home. The tenancy agreement does not define what storage space was included in the tenancy agreement. The tenants stated that the rental unit includes five bedrooms, each with their own closets, plus two other hallway closets, in addition to the hallway closet at issue in the lower area of the home. The landlord disputed that lower closet belongs to the tenants and stated that it is part of the shared common area of the home, shared between the upper tenants and the lower renters. The tenants' version is that the lower closet is for the exclusive use of the upper tenants and that they should be compensated as a result.

The tenants did not submit photos of the hallway in evidence to support this portion of their claim. I find the tenants have provided insufficient evidence to support part one, two and three of the four-part test for damages or loss described above. The tenants have failed to provide sufficient evidence that the landlord has violated the *Act*, regulation or tenancy agreement, and to prove that the hallway area located downstairs is not a common area shared with the lower renters. Consequently, **I dismiss** this portion of the tenants' claim **without leave to reapply**, due to insufficient evidence.

**Item #3** - The tenants have claimed \$600.00, comprised of \$100.00 per month for a total of six months for insufficient garbage and recycling containers. The tenants testified that they arrived at \$100.00 per month by using the amount of \$25.00 per week where they allege that garbage and recycling has spilled over the containers and that the containers provided by the landlord were not big enough for two families rental the home, which include upper tenants and lower tenants. The parties agreed that this

matter was resolved after six months, which is why the tenants reduced this portion of their claim by two months or \$200.00 for a total of \$600.00. Garbage collection is listed in the tenancy agreement as being included as part of the monthly rent.

Submitted in evidence were black and white photos of the garbage and recycling containers. The photos show three large bins, with a bag apparently ripped open outside of one of the bins and one of the bins slightly open supporting that the bin was overfull. The tenants stated that in March 2014, the landlord added two more containers for a total of five containers, with two of the containers being smaller containers. I find that the three large bins provided by the landlord before March 2014 is reasonable for two families living in a rental home, and that the tenants have failed to prove part one, part two and part three of the four-part test for damages or loss described above for this portion of their claim. Therefore, **I dismiss** this portion of the tenants' claim **without leave to reapply**, due to insufficient evidence.

**Item #4** - The tenants have claimed for seven months at \$200.00 per month for a total of \$1,400.00. The tenants claimed that the renters living below them stored potato sacks and onion sacks outside which are unsafe due to rats. The tenants referred to four photos showing the outside of the lower renters' suite in evidence. The photos are black and white and one of the photos is blurry. The tenants confirmed that there were no photos of the rats alleged to be outside. The tenants did not provide an explanation of how they arrived at the amount of \$200.00 per month as the value of their loss for this portion of their claim.

I find the photos submitted by the tenants not to be compelling. I do not see potato sacks or onion sacks as claimed in the evidence submitted. There are also no photos to support the existence of rats outside the renters' rental unit. Furthermore, the tenants failed to set out how they arrived at the amount being claimed. Consequently, I find the tenants have failed to prove part one, two and three of the four-part test for damages or loss described above for this portion of their claim. Therefore, **I dismiss** this portion of the tenants' claim **without leave to reapply**, due to insufficient evidence.

**Item #5** - The tenants clarified that they are claiming for six months at \$100.00 per month for a total of \$600.00 versus eight months listed in their application for temperature related issues in the rental unit. The tenants indicated that they used to control the heat in the rental unit but that they find it too hot in the rental unit. The tenants indicated that they closed off the heating vents as they found it too warm in the rental unit, and that the first time they notified the landlord in writing of their complaint regarding the temperature in the rental unit was on March 17, 2014, yet they are claiming for compensation dating back to the start of the tenancy in December 2013.

The tenants stated that the temperature in the rental unit has ranged from 22 degrees Celsius to 25 degrees Celsius and as of late the temperature has been 21 degrees Celsius which the tenants consider too high. The tenants testified that they controlled the heat in the rental unit from the start of the tenancy until March 25, 2014, until the landlord rewired the temperature control. The landlord testified that there is one control for the heat in the basement suite of the home. The tenants did not provide any witness statements or other evidence to support that it is too warm in the rental unit. I do not accept that the temperatures described by the tenants are unreasonable or too high. Therefore, I find the tenants have failed to prove part one, part two and part three of the four-part test for damages or loss described above for this portion of their claim. Consequently, **I dismiss** this portion of the tenants' claim **without leave to reapply**, due to insufficient evidence.

**Item #6** - The tenants clarified that they are claiming for seven months at \$200.00 per month for a total of \$1,400.00 versus eight months listed in their application for "unruly tenants below causing hardship to peaceful enjoyment of life". The tenants stated that they reached the amount of \$200.00 per month by using \$50.00 per week and multiplying that amount by four for total of \$200.00 per month. The tenants stated that they first notified the landlord in writing regarding this portion of their claim in March 2014, yet they are claiming for compensation dating back to the start of the tenancy in December 2013.

I find the landlord's response to the accordion playing, smell of smoke and cooking smell to be sufficient and that the landlord responded in a timely matter once notified in writing by the tenants. I find the tenants have failed to set out the value of their loss by choosing an arbitrary number and have provided insufficient evidence to meet the burden of proof for this portion of their claim. Consequently, I find the tenants have failed to prove part one, two and three of the four-part test for damages or loss described above for this portion of their claim. Therefore, **I dismiss** this portion of the tenants' claim **without leave to reapply**, due to insufficient evidence.

As the tenants' application has no merit, **I do not grant** the tenants the recovery of their filing fee.

### Conclusion

The tenants' application has no merit and is dismissed in full.



This decision is final and binding on the parties, unless otherwise provided under the Act, and 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*.

August 1, 2014

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Residential Tenancy Branch

