



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Affordable Housing Advisory Association  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, RR, OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an application by the tenants for an order cancelling a notice to end this tenancy and authorization to reduce their rent and a cross-application by the landlord for an order of possession and a monetary order. Both parties participated in the conference call hearing with the tenant N.W. representing both tenants.

### Issues to be Decided

Should the notice to end tenancy be cancelled and if so, should the tenants be permitted to reduce their rent?

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenancy in this rental unit began on April 1, 2013 and that the tenants paid a \$470.00 security deposit on March 8, 2013.

The tenants have been involved in at least 2 Residential Tenancy Branch hearings in the past, one on February 24, 2014 and the second on May 21, 2014. The tenants settled the issues in each of those hearings and the arbitrators involved recorded their settlement agreements. In the second settlement agreement, the arbitrator recorded the following agreement:

Both parties agreed that if the repairs ... are not completed by July 1, 2014, that the tenants will be allowed to reduce their monthly rent by \$282.00 as of July 1, 2014, until the first of the month after the landlords advise that these repairs have been completed.

The landlord testified that the repairs to the windows were completed on June 6 and that the repairs to the patio were completed on June 3. She further testified that on

June 19 she advised the tenants in writing that the repairs had been completed. N.W. did not dispute that the landlord had advised that the repairs had been completed.

The tenants were not satisfied with the condition of the patio after the landlord completed repairs and withheld \$283.00 from their rent in the month of July to which the landlord responded by serving them with a 10 day notice to end tenancy for unpaid rent. The tenants acknowledged having received that notice on July 2.

The tenants argued that the patio was not properly repaired and although a drain was cleared and a pathway created for water to drain, it drained toward the building rather than away from the building as promised in the settlement agreement and they believed it would be insufficient to prevent water from pooling on the patio.

The landlord provided a copy of an engineering report in which the author stated that after viewing the patio on July 10, it was determined that there was a slope to the drain and that the installation met normal expectations for patio slabs.

### Analysis

The parties are bound by the settlement agreement resulting from the May 21 hearing. In that agreement, the tenants agreed that they would not be entitled to reduce rent unless the repairs were not completed by July 1 and that if the landlord advised them that the repairs were complete, they could not reduce the following month's rent.

Section 26(1) of the Act provides that tenants must pay rent when it is due unless they have the right under the Act to deduct all or a portion of the rent. Although the tenants may have disagreed that the repairs to the patio were adequate, I find that they did not have the right to reduce their rent as the landlord had advised in June that repairs were complete.

For this reason, I decline to set aside the notice to end tenancy and I grant the landlord an order of possession. This order is made effective 2 days after service as there is almost one full month's rent currently owing, but the parties are welcome to come to an agreement allowing the tenants to stay longer should they choose to do so. The enclosed order may be filed in the Supreme Court for enforcement if required.

I find that the landlord is entitled to recover the \$283.00 withheld in the month of July, the \$282.00 withheld in August and the \$282.00 withheld in September. I further find that the landlord is entitled to recover the \$50.00 filing fee. I order the landlord to retain the \$470.00 security deposit in partial satisfaction of the claim and I grant the landlord a

monetary order under section 67 for \$427.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenants' claim is dismissed and the landlord is granted an order of possession and a monetary order for \$427.00. The landlord will retain the security deposit.

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 05, 2014

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Residential Tenancy Branch

