



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      CNR, MNDC, FF

### Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy and a monetary order. Both parties participated in the conference call hearing, with the owner of the property also participating in the hearing. In this decision, the named respondent, TW, is identified as the landlord and the owner is identified as the owner to distinguish the two.

At the hearing, the parties agreed that the tenants vacated the rental unit on July 1, 2015. As the tenancy has ended, I consider the claim for an order setting aside the notice to end tenancy to have been withdrawn.

### Issue to be Decided

Are the tenants entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenancy began in or about March 2013 and ended on July 1, 2015. They further agreed that rent was set at \$1,500.00 per month.

The tenants seek an order compelling the landlord to pay for part of their electrical and water bills, totaling \$675.00 for the former and \$330.00 for the latter. The tenants testified that when they moved into the unit, the rental unit was the only home on the property, but the landlord tore down a garage and built a carriage house. The tenants claimed that while the carriage house was being built and after it was rented to other tenants in March 2014, their water and electrical bills increased substantially. They testified that they complained to the landlord that they should not have to pay utilities for the other residence and the landlord agreed and gave them periodic reductions in rent. However, the tenants claim that for the past 8 months, which I take to be December 2014 – July 2015, the landlord did not pay them any money or give them a rent reduction. The tenants claim that the rent reduction was never in their view sufficient to meet the increased cost of the utilities, although they could not recall exactly how much rent was reduced. The tenants provided copies of utility bills from the beginning of the tenancy to November 2014.

The landlord and owner agreed that the tenants should not be paying for utilities for the other residence and stated that when the tenants brought the bills to their attention, they gave the rent reduction and understood that the tenants believed it to be sufficient at the time. The landlords could not recall the amount of the reductions.

The tenants seek to recover \$200.00 per month for the entire period of the tenancy as they claim they lost use of part of the property when the landlord built the carriage house. The parties initially agreed that construction took from August 2013 – February 2014, but the tenants later claimed that construction lasted for a period of 1 year. They claimed that their children were unable to play in the yard because it was muddy and uneven, they were unable to use a basketball hoop they had put up near the area under construction and the workers disturbed them very early in the morning.

The landlord provided a statement from the party who introduced the tenants to the landlord. That party stated that the tenants were made aware at the outset of the tenancy that the carriage house would be built. The owner and landlord testified that the construction workers cleaned up after themselves and denied that they worked at odd hours and disturbed the tenants. They stated that during the construction period, the tenants never at any time complained that they were losing part of the property.

The tenants did not deny that they knew early in the tenancy that the carriage house would be built.

The tenants also seek compensation for 3 months in which they claim they were unable to use one of the 3 bathrooms in the rental unit. They testified that the ceiling started leaking from the bathroom upstairs and claimed that they reported it to the landlord right away, but it took 3 months for repairs to be completed. The landlord testified that repairs were completed within 5 days.

### Analysis

The tenants bear the burden of proving their claim on the balance of probabilities. With respect to their claim for recovery of overpaid utilities, the tenants did not provide copies of utility bills for the 8 month period in question and as I do not know how much they paid for utilities and am unable to compare those bills with the bills rendered in 2013 and 2014, I find that the tenants have failed to prove the dollar amount to which they are entitled. While the tenants should not have been obligated to pay utilities for the carriage house as well as for their own rental unit, I cannot award them monies when there is no way in which I can calculate what is owing. I therefore dismiss the claim for recovery of utility overpayments.

The tenants provided photographs of the residential property, but I cannot see in any of the photographs that the area in which the carriage house was built that it interfered with the tenants' use of their property. Further, although the tenants claimed that the photographs showed areas which required them to clean up, I could not detect this in the photographs. The

tenants did not deny that they were aware at the outset of the tenancy that the carriage house would be built and I find insufficient evidence to show that the construction interfered with their yard area, that they were disturbed by the construction workers at odd hours or that they had to clean up after the workers. I dismiss the claim for loss of use of part of the property.

The tenants rented a unit with 3 bathrooms and were entitled to the use of 3 bathrooms. Although they were deprived of the use of one of the bathrooms for a period of time, they are not entitled to compensation unless they can prove it was more than a temporary inconvenience. The tenants claim that they were unable to use one of the bathrooms for a period of 3 months, but provided no evidence such as emails or text messages showing that they were communicating with the landlord over that period to request repairs or any other evidence showing that the repairs took as long as they claim. As the landlord claims that they completed repairs within 5 days, I find that the tenants have not proven their claim on the balance of probabilities and I find that the loss of use of the third bathroom was just a temporary inconvenience which is not sufficiently significant to attract compensation. I dismiss the claim.

#### Conclusion

The tenants' claim is dismissed in its entirety.

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: August 27, 2015

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Residential Tenancy Branch

