



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ERP, RP, RR, MNDC, FF

### Introduction

This matter dealt with two applications by the Tenants for emergency repairs for health and safety reasons, repairs to the unit, site or property, a rent reduction for repairs, services and facilities agreed on but not provided, compensation for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee for these applications.

The Tenants said they served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on August 20, 2015. Based on the evidence of the Tenants, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded in the absences of the Landlord.

The Tenants provided photographic evidence of the rental building to support their claims but the Tenants said they did not serve the Landlord with the photo evidence package. Consequently, I find the photographic evidence package is not accepted as part of the hearing due to lack of service to the Landlord.

### Issues(s) to be Decided

1. Are there emergency repairs that are required to be completed?
2. Are there general repairs that are required to be completed?
3. Are the Tenants entitled to a rent reduction while repairs are being completed or services and facilities are being re-instated.
4. Is there a loss or damage to the Tenants and if so how much?
5. Are the Tenants entitled to compensations for any loss or damage and if so how much?

### Background and Evidence

The tenancies started on September 1, 2014 and February 1, 2014 as fixed term tenancies for one year and then would continue on a month to month basis after the initial one year term. Rent is \$1,000.00 for Tenant C.G. and \$1,250.00 for Tenant D.S. Security deposits of \$500.00 and \$625.00 were paid at the start of the tenancy.

The Tenants said there are three main repair issues in the rental building and a number of secondary repair issues in the rental building. The Tenants said the Landlord has said they will repair all the items but the repairs or replacement of broken items has not happening and now the repair items and the loss of services and facilities are a problem for the Tenants. The Tenants said their main concern is the lack of security in the building. Tenant D.S. said when he moved in in February, 2014 the Landlord said the security system was being upgraded and would be replaced within a month. The Tenant D.S. said the security system has not been replaced and there is no security surveillance of the rental building. Tenant D.S. said the security system was promised when he entered into the tenancy agreement. Tenant C.G. said that the parking garage door was broken for three months so the parking garage was open to the public which resulted in car break-ins and car damage. Both Tenants said they had incidents with their vehicles as a result of no security surveillance and no garage door on the parking garage. Tenant C.G. said the garage door has been replaced in the last week but the old door and the door hardware is still on the floor in the parking garage and it is a hazard to both people and vehicles. The Tenants requested the Landlord to be ordered to put in a security surveillance system as promised when the tenancies began.

The second issue the Tenants sighted was the loss of use of the recreation room/meeting room/hot tub/sauna area. Tenant D.S. said access to these areas has only been provided to the tenants in the building for approximately 1 month over the last 20 months of his tenancy. The Tenants said these are services that were part of the tenancy agreement and are not being provided. Both Tenants said they are requesting and order to restore the use of these areas and they are requesting compensation for loss of use of facilities and services that are agreed to but not provided by the Landlord.

The third maintenance item that was a concern to the Tenants is the parking garage which has partially been rectified. The Tenant C.G. said the entrance door has been replaced but the parking garage is cluttered with the old door and other garbage. The Tenants requested the parking garage be cleaned up and the old door and door hardware be removed from the rental building. Tenant D.S. said he had a meeting with the Landlord to get the door repaired and he submitted repair company names to the Landlord.

Further the Tenants said there are two broken windows in the rental building that are a safety concerns as the windows could fall out and hit someone. Tenant D.S. said one window is in the atrium on the 4<sup>th</sup> floor by the elevator. It is broken and could fall at any time. Tenant D.S. said the second window is a roof panel in the front entrance area and it is cracked and could fall out any time. The Tenants said the windows have been

broken for a long time and the Landlord has ignored the problem. The Tenant requested an order to repair the windows.

The last two issues discussed by the Tenants were that there are no locks on some of the doors in the building specifically the garbage area. As a result the public is coming into the garbage area and creating a security issue for the Tenants. The Tenants requested the Landlord to provide locking doors in the rental building. The last issue discussed was the lack of janitorial services over the summer of 2015. The Tenant C.G. said there was no janitorial services provide in the summer and the rental building was very dirty. Tenant C.G. said a new janitor has been hired about one week ago. The Tenants said they hope this resolved the cleaning issues.

The Tenants' Counsel said that due to the Landlord's inaction and neglect with regard to maintenance of the rental building and the issues the Tenants have presented the Tenants are requesting the following:

1. The Landlord to be ordered to provide a security camera system as promised.
2. The Landlord to be ordered to repair and reopen the recreation room/meeting room/hot tub/sauna area.
3. The Landlord to be ordered to clean the parking garage.
4. The Landlord to be order to repair the 2 windows in the building that are broken.
5. The Landlord to be ordered to repair doors that are meant to have locks on them.

Further the Tenants Counsel said the Tenants are requesting the following compensation:

1. The Tenants are requesting a 20% rent reduction until the issues above are repaired or replaced. For Tenant D.S. the amount is \$250.00 and for Tenant C.G. the rent reduction requested is \$200.00.
2. The Tenants are requesting \$2,500.00 each in compensation for the time that these services have not been provided since the start of their tenancies. The Tenants Counsel said they were unsure of the amount they could apply for so the amount of \$2,500.00 was used.

The Tenants said in closing that the Landlord does not do the maintenance work required to fulfill the tenancy agreement therefore they are requesting orders to force the Landlord to do the maintenance work for health and safety reasons and for compensation for the lack of maintenance and loss of services and facilities that they have experienced in this tenancy.

As the Landlord did not attend the hearing nor did the Landlord make any written submissions to dispute the Tenants' claims the Tenants' testimonies are undisputed.

### Analysis

Section 32 of the Act says a Landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards that are required by law and makes rental suitable for occupation by a tenant.

Therefore a Landlord is obligated to repair items promised and included in a tenancy agreement whether written or verbal.

I accept the undisputed and affirmed testimony of the Tenants D.S. and C.G. regarding the state of repair of the rental building. Therefore, I find Tenants D.S. and C.G. have established grounds for Orders directing the Landlord to make repairs to the property. Further I accept the Tenants testimonies that the items requested to be repaired or replaced are all part of the tenancy whether written or verbal. Consequently I order the Landlord to complete the following repairs to the rental building no later than January 31, 2016.

1. I order the Landlord to provide a replacement security surveillance system for the rental building no later than January 31, 2016. This is an essential part of security for a rental complex and it provides safety to the occupants of the building.
2. I order the Landlord to repair and reopen the recreation room/meeting room/hot tub/sauna area no later than January 31, 2016. These services and facilities are part of the tenancy and must be provided or compensated for.
3. I order the Landlord to clean the parking garage which includes the removal of the old parking garage door and hardware no later than January 31, 2016. A landlord is required to maintain common area in a clean and unencumbered way. I accept the Tenants' testimony that the old garage door and hardware could present a safety risk.
4. I order the Landlord to repair the 2 windows in the building that are broken one on the 4<sup>th</sup> floor by the elevator and the other in the roof panels of the entrance of the building. Both of these broken windows are a safety hazard to the occupants of the rental building.
5. I order the Landlord to repair doors in the rental building that are meant to have locks on them. A locking door is the most basic form of security and safety in a building and if there are doors that need locks the Landlord is required to provide locks on the doors.

Further to support the completion of the repairs ordered above, I order the Tenant D.S. to reduce his rent payment by \$100.00 to \$1,150.00 until the repairs are completed and I order Tenant C.G. to reduce his rent payment by \$100.00 to \$900.00 until the repairs are completed. If the repairs are not completed by January 31, 2016 and no arrangements have been agreed to by the Landlord and Tenants regarding these repairs the Tenants are at leave to reapply for additional compensation above the rent reduction I have ordered. I find the request by the Tenants for a 20% rent reduction is not supported by any corroborative evidence therefore I dismiss the Tenants request for a 20% rent reduction.

Further, I find that the loss of the recreation room/ meeting room/hot tub/sauna as well as the stress and inconvenience of the undone repairs by the Landlord has devalued the tenancy. It is difficult to put an exact value on the loss, inconvenience and stress resulting from a sense of reduced security that the Tenants have suffered, but it appears from the Tenants' testimony and the Landlord not appearing at the hearing that the Landlord has not meet the responsibilities and obligations of a landlord. Therefore, I have put a value of \$100.00 per month as the devaluation of the tenancy for loss of services and facilities and for repairs not completed in a timely manner.

Section 27 of the Act says (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility

A material term of a tenancy is a term that is important enough that if the service or facility was unavailable at the start of the tenancy then the tenancy may not have been entered into. The Tenants indicated that the recreation room/meeting room/hot

tub/sauna was part of the facilities and services that attracted them to this rental building. As well Tenant D.S. said the rent that they pay reflects these services and if the services and facilities are not available then the rent should be reduced. Further the Tenants said the Landlord was questioned about the repairs for the items listed above and the Tenants said the Landlord said the items would all be repaired. Both Tenants said the repairs have not been done except the garage door and that may have been a result of the Tenant D.S. efforts to have repair people contact the Landlord.

Consequently I find the Tenants have established grounds for compensation for the loss of use of the recreation room/meeting room/hot tub/sauna as well as the inconvenience of the items the Landlord has not repaired. As I have order a rent reduction of \$100.00 per month for the repairs and loss of use of facilities and services for future months; I find that Tenant D.S. is entitled to \$100.00 per month from February, 2014 to October, 2015 in the amount of 20 months X 100.00 = \$2000.00 for past months that the services were not available and repairs not done. Tenant C.G. is also entitled to compensation of \$100.00 per month from September, 2014 to October 2015 in the amount of 11months X \$100.00 = \$1,100.00 for past months that the services and facilities were not available and repairs not completed.

As the Tenants has successful in this matter I Order the Tenant C.G to recover the \$50.00 filing fee from the Landlord and Tenant D.S to recover the \$25.00 filing fee from the Landlord.

Tenant C.G. is order to deduce the rent payment to \$900.00 until the Landlord has completed the repairs sighted above and Tenant C.G. will receive a monetary order for \$1,150.00 which represents the compensation for loss or damage of \$1,100.00 and the filing fee of \$50.00.

Tenant D.S. is order to deduce the rent payment to \$1,150.00 until the Landlord has completed the repairs sighted above and Tenant D.S. will receive a monetary order for \$2,025.00 which represents the compensation for loss or damage of \$2,000.00 and the filing fee of \$25.00.

### Conclusion

A monetary order is awarded to Tenant C.G. in the amount of \$1,150.00.

A monetary order is awarded to Tenant D.S. in the amount of \$2,025.00

Tenant C.G. is order to reduce the rent payment to \$900.00 until the repairs are completed.

Tenant D.S. is order to reduce the rent payment to \$1,150.00 until the repairs are completed.

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 20, 2015

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Residential Tenancy Branch

