



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding THE HERITAGE  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, ERP, O, OLC, PSF, RP, RR, OPR, MNR, MNSD, MNDC, FF

### Introduction

In the first application the tenant seeks to cancel a ten day Notice to End Tenancy for unpaid rent, he also seeks an order that the landlord attend to various repairs, provide services or facilities to which he is entitled and for a rent reduction.

In the second application the landlord seeks an order of possession pursuant to the ten day Notice and for a monetary award for unpaid rent or loss of rental income.

At hearing it was agreed that the tenant will be vacating the premises at the end of October 2015 and that the landlord will have an order of possession for one o'clock in the afternoon of October 31, 2015.

It was agreed that the tenant has not paid rent for the months of August, September and October 2015, a total of \$3900.00.

The written tenancy agreement shows that "The H..." is the name of the landlord, not Ms. B.K. as listed in the landlord's application and not "The H... Apartments" as listed in the tenant's application. The style of cause has been amended accordingly to add "The H..." as landlord.

### Issue(s) to be Decided

Since the tenant will soon be vacating, an order compelling the landlord to make repairs or otherwise comply with the law or the tenancy agreement is no longer required. The remaining issue is whether the relevant evidence presented during the hearing shows on a balance of probabilities that the tenant is entitled to compensation by way of rent reduction, for loss of services or facilities, noise from construction/repair work for failure to repair.

### Background and Evidence

The rental unit is a one bedroom apartment in a high-rise apartment building. The tenancy started in May 2015. The current monthly rent is \$1300.00, due on the first of each month, in advance. The landlord holds a \$650.00 security deposit.

The tenant testifies that the apartment building has an outdoor swimming pool but that the landlord failed to maintain it in a useable condition. It was not filled with water and the water remaining in it was brown and dirty.

The landlord's property manager Ms. B.K. says that the pool was not a service of facility included in the written tenancy agreement submitted in evidence.

The tenant says that there has been construction work being done on the exterior of the building the entire duration of his tenancy. He says there is loud jackhammer noise during the day and that sometimes chunks of broken concrete have fallen onto his balcony. He produced a photograph showing chunks of concrete on a balcony. He says he often works at home and that the noise interferes. He says the dust and debris from the work requires him to clean everyday.

The landlord's property manager says that she has called the tenant's employer and has been told he does not work from home. She says that the work on the exterior of the building has been conducted on the other side of the building and that it would be impossible for chunks of concrete to fall onto the tenant's balcony.

The tenant says his oven does not heat well enough to cook a pizza. The landlord's property manager denies there is anything wrong with the oven.

The tenant says the landlord must install a buzzer in his unit so that he can unlock the building's front door to let guests in. The landlord's property manager says the tenant wants an "app" for his smart phone to permit him to open the front door but that the building's system does not permit that advanced technology. She says the tenant knows that he must acquire a plug in phone to attach to the phone jack in the rental unit and then he can remotely unlock the front door for his guests.

The tenant says the fan in his bathroom is noisy and the landlord refuses to fix or clean it. The landlord's property manager says there is nothing wrong with the fan.

## Analysis

The written tenancy agreement states:

No furnishings, equipment, facilities, services, or utilities will be provided by the landlord and included in the rent EXCEPT those checked below, ...

A number of preprinted items such as “window coverings,” “stove” and “dishwasher” are checked off as being included in the rent. There is not pre-printed item relating to a pool. There is a line item marked “Other Facility or Service” to be filled in by hand. It is blank.

The swimming pool beside the apartment building is a facility. Had it been included in the tenant’s tenancy agreement it would reasonably have been included as “Other Facility or Service.” The tenancy agreement is clear that only those facilities listed are included.

On this basis I find that the pool facility was not included as part of rent in the tenant’s rental agreement. This item of the claim is dismissed.

The evidence about whether the oven is working properly is inconclusive. It does not permit me to choose between the assertions of the tenant and those of Mr. B.K.. The initial burden of proof is on the tenant to show, on a balance of probabilities that the oven is defective and his testimony alone, when contradicted by the testimony of Ms. B.K., is not sufficient to satisfy that burden in this case. This item of the claim is dismissed.

For the same reasons I must dismiss the tenant’s claim regarding the fan. Without some objective evidence, it is not possible to determine that anything is wrong with the fan.

In regard to the buzzer, the evidence is simply too sparse for me to determine what buzzer system has been provided in this apartment or whether the tenant is entitled to the use of some buzzer system other than that provided. I dismiss this item of the claim.

In regard to the issue of building construction, it appears that the landlord has been carrying out significant work on the exterior of the building. I assume it is connected to some renovation or repair of the building. With the limited evidence presented and in the face of Ms. B.K.’s denial that any work was done on the tenant’s side of the building,

there is a significant question of where the work was actually carried out and whether or not any concrete fell onto his balcony. The tenant's evidence about the level of the noise, its frequency and any cleaning and inconvenience related to it was cursory. In all the circumstances I am unable to reach a conclusion about where the work was occurring, what the work involved or whether the noise or debris from it it would cause the tenant any bother or inconvenience sufficient to justify an award of damages. I dismiss this item of the claim.

### Conclusion

The tenant's application is dismissed.

The landlord will have an order of possession, as agreed.

The landlord is entitled to a monetary award of \$3900.00, plus recovery of the \$50.00 filing fee. I authorize the landlord to retain the \$650.00 security deposit in reduction of the amount awarded. There will be a monetary order against the tenant for the remainder of \$3300.00.

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 23, 2015

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Residential Tenancy Branch

