



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ERP RP OLC MNDC FF

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") for a monetary order for compensation for damage or loss (and emergency repairs) under the *Act*, regulation or tenancy agreement pursuant to section 67; an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; an order to the landlord to make repairs, including emergency repairs to the rental unit pursuant to section 33; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attending the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. Both parties confirmed receipt of the other party's evidentiary materials for this hearing.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order against the landlord?

Are the tenants entitled to an order requiring the landlord to comply with the *Act* and an order specifically ordering the landlord to make emergency repairs?

Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

This tenancy began on December 1, 2014 with a rental amount of \$1800.00 payable on the first of each month. The landlord continues to hold a security deposit in the amount of \$900.00 and a \$900.00 pet damage deposit paid by the tenants on November 19, 2014.

The tenants claim that "despite a no parking notice, [the landlord] and his guests are ... parking in our driveway that we pay rent for." The tenants claim compensation in the amount of \$100.00 for every time the landlord or his guests park in their parking spot.

The tenants testified that their family has 4 cars and that they have difficulty parking in their home as a result of the ongoing use by the landlord of their assigned parking spots.

The tenants also claim that the landlord's neighbours are using the residential premises' electricity/power while their home undergoes construction thereby substantially increasing the tenants' electricity bill. The tenants testified that their tenancy agreement requires them to pay 50% of the electricity for the rental unit and therefore the accommodation of the neighbour is directly costing them in monthly bills.

The landlord did not deny that the landlord's neighbours are using their power/electricity while their home is under construction. The landlord submits that the neighbour is paying an amount && of the electricity/power and therefore the tenants are not exposed to any additional costs.

With respect to the issue of parking, the landlord testified that the tenancy agreement states that the tenant is permitted use of the double garage (it is an included amenity within the rental agreement) but does not specify with respect to use of the driveway. The tenant responded that this is a distinction without a difference: if the driveway is blocked, he cannot access the garage.

### Analysis

In some cases, issues related to parking raise a jurisdictional issue and are found to be beyond the purview of the Residential Tenancy Branch. However, in this particular case, parking is an amenity provided as part of the tenancy agreement and therefore the *Act* is applicable to the tenants' application regarding parking.

Section 27 of the *Act* provides that a landlord can terminate or restrict a service or facility if that facility that is not a material term of the tenancy agreement. To do so, the landlord must provide 30 days' written notice in the approved form and reduce the rent in an amount equivalent to the reduction in service or facilities available to the tenant.

In this case, I accept the undisputed testimony of the tenant that the landlord has interfered with the tenants' access to the garage at the residence. The landlord's position that his use of the driveway is not interference is unacceptable. Practically, the landlord has affected the availability of parking by the tenants, a provision of the tenancy agreement to the tenant.

The landlord is not precluded from making a change to non-material services or facilities available to a tenant. However, in doing so, the landlord must comply with the *Act* by; providing appropriate notice and taking steps to accommodate the tenant with a rent reduction. As the landlord has not taken these steps, I find that the tenant is entitled to an order that the landlord comply with the *Act* and this residential tenancy agreement by permitting the tenants unfettered access to the double garage. As compensation or a past rent reduction for lack of full access to the double garage as a result of the actions of the landlord and his guests from January 2016 to the date of this hearing, I find that the tenant is entitled to a nominal amount of compensation of \$400.00.

In his testimony, the landlord did not deny that the tenants are required to pay 50% of the electricity/power bill. He also did not deny that he is currently allowing the neighbours to access the power from the residential premises for the purposes of their construction work. The landlord testified that the amount paid by the tenants has not been impacted by the neighbour's use of power/electricity and he provided documentary evidence (utility bills) to support this claim. The tenant did not dispute that, as of the date of this hearing, the amount that he has paid in utilities has not increased.

Given that, at this juncture, there is insufficient evidence that the tenants are impacted by the generosity of the landlords to their neighbours, I find that the tenants are not entitled to an order or compensation with respect to the electricity. However, I caution the parties to ensure that the tenants are not financially impacted by this generosity.

### Conclusion

I order the landlord to provide the tenants with unfettered access to the double garage. The landlord will leave a portion of the driveway clear at all times to allow the tenants access to the garage with their vehicles.

I issue a monetary award of \$400.00 to the tenants. I allow the tenants to deduct their next rental payment by \$400.00 in recovery of this amount.

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: April 19, 2016

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Residential Tenancy Branch