



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This was a hearing with respect to the tenants' application for a monetary award. The hearing was conducted by conference call. The tenant and the landlord called in and participated in the hearing. The parties submitted and exchanged documentary evidence prior to the hearing.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award and if so, in what amount?

### Background and Evidence

The rental unit is the upper portion of a house in Burnaby. The tenancy began October 1, 2014 on a month to month basis with rent in the amount of \$1,650.00 payable on the first of each month. The tenants paid a security deposit of \$825.00 before the tenancy began. The tenant testified that the tenancy is ending pursuant to the landlord's Notice to End Tenancy for landlord's use and the tenants will be moved out as of the day of the hearing.

The tenants have claimed a monetary award in the amount of \$4,000.00. The tenant said that the claim amounted to a 10% rent reduction over the course of the tenancy because of all the problems and loss of use and quiet enjoyment during the tenancy.

The tenant testified that they viewed the rental property in September, 2014 after seeing an advertisement on the internet. They liked the size, location and swimming pool on the property. The landlord accepted their security deposit of \$825.00. The tenants signed the tenancy agreement, but were concerned because the landlord added a provision that use of the pool was not included in the rent. The clause stated that: "extra charges can be discussed later". The tenant said that the landlord was to

perform yard work and the utility bills were to be split between the upper unit, occupied by the tenants and the lower unit with the tenants paying two thirds of the bills and the lower occupant one third. The tenant said the house was poorly cleaned when they moved in.

The tenant referred to numerous repairs to the house that were either not done after many requests, or that took far too long for the landlord to complete. The light in the bedroom stopped working soon after they moved in and it was not fixed. The tenants had to purchase a floor lamp to use instead.

The tenants complained about the utility bills. The landlord reduced the electrical bill from two thirds to one half, but only for a few months and then reverted to the former charges.

The tenants complained about holes in the patio or balcony deck. After the tenant's complaint it took the landlord months to fix the holes. They also had to make repeated requests to get the landlord to cut the grass in the back so they could use the yard. In the spring of 2015 the tenants requested that the landlord have the pool ready for use. The landlord told the tenants that they could discuss pool use with the basement tenant; they could share the cost of pool maintenance and find their own maintenance man to look after the pool. The landlord did not mention an additional charge for the pool, apart from the requirement that the tenants maintain the pool at their own expense. The tenants did take care of pool maintenance at their own expense, but they were surprised to find that the landlord added a \$10.00 charge for using the pool. The landlord told them the charge was to cover the added electrical costs of running the pool pump. The tenant said that they and the downstairs tenant were already paying the electrical bill, but in order to preserve relations the tenants paid the \$10.00 charge.

In June 2015 the tenant asked the landlord to pressure wash the deck because it was slippery and dangerous. The landlord promised to do the work right away, but it was never done. The tenant finally rented the equipment and pressure washed the deck and the landlord reimbursed him for the expense. The landlord cleaned the yard at the tenants' request so it could be used, but his worker dumped the waste in the outdoor fireplace and left it for the tenants to clean up. The landlord left the holes in the balcony deck unfinished and also left the balcony railings unbolted and unsecured without placing any warning signs. The work was only finished in August after numerous complaints from the tenant and threats to hire someone to do the work and bill the landlord.

The tenants had a friend stay in the rental unit with them commencing in July, 2015. The tenant said the landlord increased the utility charges from two thirds to three quarters of the bill amounts.

The tenant said the landlord told them in December that he intended to demolish the house and told them to start looking for a place to move. The tenant complained that the landlord dumped some old couches in the driveway of the rental property and left them there for several months before disposing of them.

In March and April, 2016 the tenant asked the landlord to do some yard maintenance and cut the lawns. The work was not done. In May the landlord served the tenants with a two month Notice to End Tenancy for landlord's use. The Notice was incomplete and it was cancelled after a hearing in June. The landlord served a second Notice to End Tenancy for landlord's use dated July 25, 2016. This Notice required the tenants to move out by September 30, 2016 and it was given because the landlord intends to demolish or renovate the rental unit in a manner that requires it to be vacant. The tenants did not dispute the second Notice.

The tenant complained that in June there were more holes in the balcony deck and that the grass was overgrown and needed cutting. The landlord also installed a fence in the backyard that restricted the tenants' access. The landlord also dumped a load of gravel in the driveway used for parking at the rental unit.

The tenant said that In August, 2016 when the tenant deducted the \$100.00 filing fee from the August rent the landlord became irate and said the tenant was no longer allowed to use the pool and threatened to chain up the back yard.

The tenants reported to the landlord that a family of raccoons was crawling through the hole in the patio deck and living in the floor assembly. The tenants asked the landlord to patch the holes and requested that he have a professional capture the raccoons first. The tenant said the landlord arrived later in the week and began covering the holes. The tenants said that after the holes were patched, they notice a bad odour and increasing amounts of flies and maggots in the kitchen. On August 20<sup>th</sup> the landlord placed a chain and padlock on the pool entrance gate with a sign stating: "No unauthorized personnel past this point". The tenant said the landlord removed the tenants' outdoor furniture and dumped it in a pile at the foot of the patio stairs.

The tenant said that the claim for compensation was based on the loss of quiet enjoyment of the patio balcony in 2015 and 2016 and for the loss of use of the backyard in 2016 due to lack of maintenance as well as the year long wait for a bedroom light and

the landlord's failure to properly deal with the raccoon problem. The tenant also complained that the landlord used the property as a dumping ground for construction waste throughout the tenancy. The tenant said that the claim of \$4,000.00 was based on an assessment of 10% of the rent paid during the two year tenancy.

The landlord denied that the tenants suffered any significant inconvenience during the tenancy. The landlord said that he fixed the balcony and submitted pictures to show that the tenants were able to use the balcony and were able to enjoy a "luxurious life" on the balcony. The landlord denied that he did not clean up yard waste and blamed the tenants for making a mess with waste from their yard parties. The landlord said that he had the use of half the driveway and used his side to store his trailer and some gravel

In the landlord's written submission he said that he was claiming a monetary award. He said he was claiming \$6,000.00 because the tenants sublet rooms in the rental unit without permission from the landlord and he claimed a further \$2,700.00 for swimming pool rent at \$300.00 per month for nine months.

### Analysis

The tenants submitted photographic evidence and provided oral testimony concerning the loss of use of the upstairs deck due to the landlord's failure to repair and maintain it in a timely and effective way. The tenant's photographs also show that the landlord did not keep up the yard and I find that for a significant part of 2016 it was so poorly maintained that the yard and pool was not useable by the tenants.

The tenants complained of other matters, including the landlord's use of the driveway, but I find that the tenants were not granted the exclusive use of the driveway and the evidence does not show that the landlord prevented the tenants from use of a portion of the driveway.

I accept the tenant's testimony with respect to the damage to deck and the tenants' loss of use of the deck due to delayed and inadequate repairs. I accept as well that they were deprived of seasonal use of the back yard and pool for part of the summer of 2016 because of the landlord's failure or refusal to properly maintain the yard. I find that the tenants' loss of use was significant, but it was not a complete loss of use and it was temporary. I find that the loss of use, both of patio and of the yard and pool justifies an award of compensation, but not to the extent sought by the tenants. I find that an appropriate award to reflect the loss of quiet enjoyment is a global award in the amount of \$1,000.00 for loss of use and enjoyment of the rental property, including the patio

deck and yard for several periods of time in 2015 and 2016 that resulted from the landlord's failure to repair and maintain the property in an effective and timely manner.

In the landlord's written materials he has set out a monetary claim. The landlord has not applied to make a monetary claim and there is no claim to be adjudicated.

### Conclusion

I have allowed the tenants' claim in the amount of \$1,000.00. The tenants are entitled to recover the \$100.00 filing fee for a total award of \$1,100.00 and I grant the tenants an order under section 67 in the said 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: November 07, 2016

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Residential Tenancy Branch