



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDC, OLC, PSF

### Introduction

This hearing was convened by way of conference call in response to the Tenants' Application for Dispute Resolution (the "Application") filed for the following reasons: for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; for the Landlords to comply with the Act, regulation or tenancy agreement; and for the Landlords to provide service or facilities required by law.

The male Tenant appeared for the hearing and provided affirmed testimony as well as a handwritten receipt for the costs being claimed from the Landlords. There was no appearance by the Landlords during the 46 minute hearing. Therefore, I turned my mind to the service of the documents by the Tenants.

The Tenant testified that the Landlords were each served a copy of the Application and the Hearing Package by registered mail on February 15, 2017. This was done pursuant to Section 89(1) (c) of the Act. The Landlord provided the Canada Post tracking numbers into oral evidence. These are detailed on the front page of this Decision.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Tenant, I find the Landlords were deemed served with the required documents on February 20, 2017 pursuant to the Act. The hearing continued to hear the undisputed evidence of the Tenant as follows.

### Issue(s) to be Decided

- Are the Tenants entitled to monetary compensation for the failure of the Landlords to clear snow as required in this tenancy?

### Background and Evidence

The Tenant testified that this tenancy for a four bedroom single family dwelling on a farm property started six years ago on a month to month basis. Rent is payable by the Tenants in the amount of \$1,130.00 on the first day of each month. The Tenants paid the Landlords a security deposit of \$550.00 at the start of the tenancy which the Landlords still hold in trust.

The Tenant testified that as part of the rental home, they have their own exclusive use of a 100 meter long driveway which they use to access the road and the rental home. The Landlord and other renters live on separate dwellings on the farm property and each have their own driveways.

The Tenant testified that even though there is nothing recorded on the tenancy agreement, the Landlords have been clearing the snow from the Tenant's driveway every year since the tenancy started and the Tenants are responsible for the yard work. The Tenant testified that the Landlords have farm machinery which they use to clear the snow efficiently and quickly and they have been doing this each year since the tenancy started.

The Tenant testified that however, this year with the heavy snowfalls, the Landlords did not clear the snow. The Tenant testified that he contacted the Landlords by phone as he had a good relationship with them but they informed him that they were not going to do it because they were involved in a dispute with the other renters on the farm property, a dispute which the Tenants have nothing to do with.

The Tenant testified that for the four days of January 31, February 1, 2, and 3, 2017, he was unable to use the driveway due to the huge amount of snow that had accumulated. Therefore, the Tenants now claim four days of prorated rent for a total amount of \$150.64.

The Tenant testified that he spent eight hours shovelling the long driveway by hand. The Tenant explained that he contacted a company who told him they charge \$65.00 per hour to clear shovel but that was inclusive of the machinery that would be used and the little time it would have taken with the use of that machinery.

As a result, the Tenants claim eight hours of snow shovelling at \$65.00 per hour for a total of \$520.00.

### Analysis

I have examined the Tenant's undisputed testimony and make the following findings based on a balance of probabilities. Policy Guideline 1 on a tenant's and landlord's responsibility in residential tenancies states that generally for a single family dwelling the tenant is responsible for snow clearing.

However, in this case, I accept the Tenant's undisputed oral evidence that the Landlords provided snow clearing from the onset of the tenancy and therefore, this effectively became a term of the tenancy agreement.

Therefore, I find the Landlords are estopped from claiming they are no longer to provide this service and must perform their obligation to clear the snow from the Tenants' driveway or provide proper notice of the withdrawal of this service pursuant to the Act.

With respect to the Tenants' monetary claim, I grant the Tenant's the four days of prorated rent during which time the Tenants were unable to get in and out of the property due to the high amounts of snow that accumulated as a result of the Landlords' failure to remove it.

With respect to the Tenants' monetary claim for compensation for the time he spent shoveling the snow by hand, I make the following findings. The Tenants failed to provide any supporting evidence from a company that charges \$65.00 per hour to clear snow. However, I accept this amount as reasonable taking into consideration that a company would be using industrialized machinery to remove the snow which would cost more; however, the amount of time taken by a company with machinery would be much less than the eight hours it took the Tenant to clear.

Accordingly, I accept the Tenant's undisputed evidence that it took him eight hours to shovel the 100 meter long drive way. However, I limit the Tenant's hourly rate to \$25.00 per hour as he did not use any industrialized machinery and did it by hand. Therefore, the Tenants are granted \$200.00 for this portion of their claim.

Accordingly, the total amount awarded to the Tenants in monetary compensation is \$350.64 (\$200.00 + \$150.64). Pursuant to Section 72(2) (a) of the Act, the Tenants may achieve this relief by deducting this amount from a future installment of rent. The Tenants may want to attach a copy of this Decision when making the reduced rent payment.

### Conclusion

The Landlord is ordered to provide the Tenants with snow clearing. The Tenants may deduct \$350.64 from their next installment of rent to achieve the relief awarded for the failure of the Landlord to clear snow from the rental property.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the.

Dated: March 09, 2017

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Residential Tenancy Branch