



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, MNDC

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order requiring the landlords to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 62; and
- a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement pursuant to section 67.

The tenants and landlord LV (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenants testified that the landlords were personally served the tenants application, amendment, supporting documents and hearing notice on March 13, 2017. The landlord confirmed receipt of the tenants' application for dispute resolution, amendment to the tenants' application, supporting documents and hearing notice. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' application, amendment, supporting documents and hearing notice.

### Preliminary Issue – Landlord Evidence

Pursuant to Rule 3.15 of the Residential Tenancy Branch Rules of Procedure, a respondent must serve the Residential Tenancy Branch and applicant any documentary evidence intended to be relied upon not less than 7 days before the hearing. At the outset of the hearing, the landlord testified that although she hand delivered a 106 page evidence package to the Residential Tenancy Branch on March 29, 2017 she did not serve this documentary evidence to the tenants. In the absence of service of the evidence package to the tenants, I find it would prejudice the tenants to admit it and therefore have not relied on the landlords' 106 page evidence package to form any part of my decision.

### Issue(s) to be Decided

Are the tenants entitled to an order requiring the landlords to comply with the *Act, Regulation* or tenancy agreement?

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

### Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on July 1, 2016 on a fixed term until August 30, 2016 after which time the tenancy continued on a month to month basis. Rent in the amount of \$17,995.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$8,997.50 and pet damage deposit in the amount of \$500.00 at the start of the tenancy, which the landlords still retain in trust. The tenants vacated the rental unit on February 28, 2017.

The tenants are seeking compensation in the amount of \$24,999.90, including the following;

Item	Amount
Loss of use	\$11,876.70
Loss of quiet enjoyment and stress	\$12,938.20
Laundry	\$185.00
Total Monetary Claim	\$24,999.90

The tenants contend that they rented the fully furnished luxury penthouse primarily for the use of the indoor heated pool. The tenants explained that the pool, which sits adjacent to the living room, was unusable from October 2, 2016 to January 9, 2017.

It is the tenants' position that the landlords' workers closed and locked the pool room doors causing condensation and eventual mold rendering the pool unusable. The tenant testified they notified the landlords of the mold issue on October 2, 2016. Although the tenants acknowledge the mold issue was remedied at some point, they testified that on October 22, 2016 they were instructed by the landlords not to use the pool and were only advised it was in working order after they contacted the landlords by email in December of 2016. The tenants explained that despite this advisement, the temperature of the pool remained inadequate and the pool remained unusable until such time that the caretaker increased the temperature on January 9, 2017. The tenants explained that they could not access the temperature controls themselves due

to a new barrier built by the landlords. The tenants estimated their loss by calculating the percentage of loss of square footage (1100 pool area square feet divided by 5000 rental unit square feet = 22%) , multiplying the monthly rent by the percentage of lost square footage (\$17,995.00 x 22% = \$3,958.90) and multiplying the monthly loss by the number of months unusable (\$3,958.90 x 3 months = \$11,876.70).

In an effort to support their claim the tenants have provided copies of the tenancy agreement, text messages, emails, excerpts from the pool maintenance manual, photographs and excerpts from the rental unit manual.

In response, the landlord acknowledged that the tenants did lose use of the pool, however the landlord contends it was a loss of three days; not three months. The landlord testified that on October 23, 2016 she instructed the tenants to shut off the pool to mitigate moisture and on October 26, 2016 the pool was turned back on by the attending remediation expert. The landlord contends that the tenants knew the pool was operational prior to December 2016, as the tenants called the landlords from their vacation between November 3, 2016 and November 20, 2016. The landlord testified that while the tenants were away on vacation the pool area was dried out and an enclosure was built around the temperature controls. The landlord explained that the enclosure was built because the tenants had carelessly left the pool covers on top of the gas heater and a child's inflatable toy was found melted to the gas heater. The landlord testified that email correspondence shows that although the tenant complained of pool temperature they used the pool throughout the three month duration for which they now seek compensation.

Initially the tenants sought a month's reimbursement for the loss of quiet enjoyment, however this brought their monetary claim above the allowable amount of \$25,000.00 and as a result, the tenants amended their loss of quiet enjoyment claim to \$12,938.20.

The tenants are seeking compensation for loss of quiet enjoyment, including the following;

Number	Item
1	Cleaning not done at move in
2	Mailbox key not supplied at move in
3	Third garage door opener not supplied
4	Two additional fridges

	repaired six months after reported
5	Lied about pool working and pool being cleaned
6	Constant threat of eviction
7	Failure to reimburse for laundry services
8	Microwave replaced two months after reported
9	Failure to conduct move in inspection report
10	Failure to provide copy of move out report

1. The landlord explained that upon the tenants request they were granted an early move-in, specifically June 30, 2016, the same day the cleaners were scheduled. The landlord testified that the tenants agreed to reschedule the cleaners at a later date to accommodate their early move-in. The cleaners attended the unit on July 12, 2016.
2. The landlord testified that a mailbox key was provided to the tenants in December 2016.
3. In regards to the garage door opener, the landlord testified that two openers were provided to the tenants and they were unaware the tenants wanted a third opener.
4. The landlord testified that once she became aware of the fridge issues, she provided her credit card to the tenants and advised them to arrange the repair.
5. The landlord disputes the tenants' allegation that they lied about the functionality and cleanliness of the pool.
6. The landlord did not provide any testimony in response to threat of eviction.
7. The landlord acknowledged they agreed to reimburse for laundry services upon receipt of the invoice and because they did not receive the invoice until move-out they did not reimburse.

8. The landlord testified that a new microwave was ordered however this microwave did not fit the opening and another order had to be placed. In the interim, the landlord provided their personal microwave to the tenants for their use.

9. The landlord testified that the agent they used to rent the unit attempted to coordinate and conduct a move-in inspection report however the agent received no response from the tenants.

10. The landlord testified that a move-out inspection report was completed on February 28, 2017 and a copy given to the tenants.

The tenants testified that at the beginning of their tenancy the washing machine broke and while waiting for repair, the tenants used a laundry service which at the time; the landlord had agreed to pay for. The tenants provided a copy of the laundry receipt.

The landlord testified that she was agreeable to paying \$185.00 for laundry services and would send a cheque in the mail within a week of the hearing.

### Analysis

The tenants seek compensation in the amount of \$11,876.70 for the loss of use of the pool room and pool from October 2, 2016 to January 9, 2017, specifically 22% of the total square footage of the rental unit.

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.

In this case, I find that there was a breach of the landlord's obligation to provide a rental unit that complies with section 32 of the *Act*. Therefore the value of the tenancy agreement was reduced.

Section 65(1)(c) and (f) of the *Act* allows me to issue a monetary award to reduce past or future rent by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

There is no dispute that the pool room was affected by mold. Based on the evidence submitted I find it reasonable that the tenants could not adequately use this area from the time the mold was first reported on October 2, 2016 until November 2, 2016, the

day prior to the tenants vacation. In regards to the use of the pool, I prefer the testimony of the landlord over that of the tenants. The landlords' testimony was consistent with the submitted emails that indicate the pool was used following the report of mold on October 2, 2016 and prior to the December 2016 email confirming the pool was safe to use. The tenants' evidence, on the other hand was not credible. The tenants provided no explanation that would justify the use of the pool during a time they contend they were unable to use it. The landlords' testimony has persuaded me on the balance of probabilities that the pool was used by the tenants following the report of mold and prior to the December 2016 email. Therefore I find the tenants knew or ought to have known the pool was usable at some point during this time. In regards to the pool temperature, I find the tenants have provided insufficient evidence to establish the temperature set by the landlord was inadequate.

With consideration of the objective value of the areas impacted, the nature of the damage, and the duration of the loss, I accept the tenants' submission and value the diminishment of this tenancy as 22%. I find that the tenancy has devalued since October 2, 2016 until November 2, 2016. In accordance with paragraphs 65(1)(c) and (f) of the *Act*, I find that the tenants are entitled to a retroactive rent abatement in the amount of \$3,958.90 for the one month of loss. I consider this amount reasonable given the impact that the mold had on the tenants.

The tenants seek compensation in the amount of \$12,938.20 for the loss of quiet enjoyment and stress.

Section 28 of the *Act* establishes a tenant's entitlement to quiet enjoyment which includes rights to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit and use of common areas for reasonable and lawful purposes, free from significant interference.

A breach of quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the *Act*. However, I find other than the allegation of the constant threat of eviction; the items listed by the tenants under loss of quiet enjoyment have no bearing towards an alleged loss of quiet enjoyment. Instead I find the tenants "loss of quiet enjoyment claim" is about loss of services and value of their tenancy.

I find the tenants provided insufficient evidence to substantiate a constant threat of eviction. Therefore, I find the tenants failed to prove a beach of quiet enjoyment to form the basis of a claim for compensation.

Based on the landlords admission that compensation for laundry services are owed, I grant the tenants a monetary award of \$185.00.

The landlords have filed an application to retain the security and pet damage deposits. This matter is scheduled to be heard on August 15, 2017. The file number has been included on the front page of this Decision for ease of reference

### Conclusion

I issue a monetary order in the tenants' favour in the amount of \$3,958.90.

I issue a separate monetary order in the tenants favour in the amount of \$185.00. The tenants will not enforce this monetary order if the landlord has already paid 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: May 29, 2017

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Residential Tenancy Branch