



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNDC, OLC, RR, FF

### Introduction

This hearing was convened in response to an application by the Tenant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49I
2. A Monetary Order for compensation - Section 67;
3. An Order for the Landlord’s compliance - Section 62;
4. A rent reduction - Section 65; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant’s Witness provided evidence under oath.

### Preliminary Matter

The Tenant confirmed that the tenancy has ended. As claims to cancel a notice to end tenancy, a rent reduction and a landlord’s compliance are all claims related to an ongoing tenancy I dismiss these claims.

The Landlord states that no evidence package was received from the Tenant. The Tenant states that the evidence package was sent to the Landlord by registered mail on July 6, 2017. The Tenant states that the tracking information stated that the package was not claimed. The Landlord states that no registered mail card was received by the

Landlord and that perhaps while they were away for a week their lower tenant collected this mail and did not inform the Landlord.

Section 90 of the Act deems registered mail to be received 5 days after it is posted. Given the Tenant's credible and reliable postal evidence I find that the Tenant did send the evidence package to the Landlord. As it is the Landlord's responsibility to collect their mail, and given the postal evidence of the registered mail card being delivered to the Landlord, I find that the Landlord did have the opportunity to collect this mail. As a result I accept that the Tenant's mail was delivered properly and is therefore capable of being considered regardless of the Landlord not having collected the mail. The Tenant's documentary evidence from the evidence package was described and was read into the proceedings for the Landlord's benefit.

#### Issue(s) to be Decided

Is the Tenant entitled to the compensation claimed?

Is the Tenant entitled to recovery of the filing fee?

#### Background and Evidence

The following are undisputed facts: The tenancy started in 2010 or 2011 and ended on July 15 or 16, 2016. Rent of \$1,490.00 was payable on the first day of each month. The tenancy ended as a result of the Landlord's issuance in May 2016 of a notice to end tenancy for landlord's use (the "Notice") with an effective date of July 31, 2016. The reason for the Notice was that the Landlord and their family would be moving into the unit.

The Tenant states that in addition to the upper unit that the Tenant was renting there were two basements suites as well and that the Landlord only gave notice to end the tenancy for landlord's use to one of the basement suites. The Tenant states that after moving out of the unit the Tenant stayed in touch with the tenant who was not evicted from the one basement suite. The Tenant states that the Landlord never moved into the

unit and that in October 2016 the unit was advertised for rent for a much greater amount than the Tenant was paying. The Tenant claims compensation of \$2,980.00 (\$1,490.00 x 2).

The Landlord states that they did intend to downsize and move into the unit as her husband wished to reduce his work time. The Landlord states that they started renovations to their family home in preparation for a sale and the move to the rental unit but that their daughter became very ill. The Landlord describes the daughter's medical condition and states that surgery was required. The Landlord states that after the surgery on June 21, 2016 they still were planning the move however in July 2016 the physician informed the Landlord that the daughter's condition required that stress be minimized. The Landlord also states that the physician suggested that any change in living conditions would be stressful. The Landlord states that between August and October 2016 their daughter appeared to fully recover and that the Landlord started renovations to the rental unit at the beginning of August 2016. The Landlord states that it was decided not to move into the rental unit as it would be too stressful for their daughter's condition. The Landlord states that they would not have done the renovations to the rental unit in August if they had not planned on moving in themselves. The Landlord states that they also would not do renovations if they were going to rent the unit.

The Tenant states that the Landlord informed the Tenant before serving the Notice that their daughter was ill and wonders why the Landlord would end the tenancy if stress made the condition worse. The Tenant states that the relationship with the Landlord was not good during the tenancy as the Tenant would ask for repairs and that the Landlords believed the Tenant was troublesome for seeking repairs. The Tenant states that the Landlord knew full well what they were doing and they were not planning on moving into the unit. The Tenant's Witness states that they were told by the Landlord that the reason for ending the tenancy was because their daughter was ill and that they were downsizing. The Witness states that he is also friends with the remaining tenant

and that he still picks up mail from this tenant. The Witness states that he saw the renovations being done to the unit. The Witness states that the Landlords simply renovated the unit and moved in other tenants immediately after the renovations were complete.

The Landlord states that the lower tenant is not mentally capable of understanding things. The Landlord states that the Witness was never inside the upper unit so would not know about renovations.

The Tenant states that after a couple of years into the tenancy the deck became dangerous and unusable with soft spots and rotting wood under the vinyl cover. The Tenant states that repairs to the deck were requested several times starting in April 2015 and continuing throughout that summer. The Tenant states that while the Landlord agreed to repair the deck this never happened. The Tenant states that they lost use of the deck that was otherwise used for some storage, barbeques, entertaining and as part of the yard. The Tenant claims \$3,030.00 as the amount of rent determined by the square footage lost multiplied by the 15 months from April 2015 to July 2016.

The Landlord agrees that there were soft spots on the deck and that the Tenant asked for repairs but that the Tenant came up with a solution by covering the soft spot with a planter to ensure that nobody walked over the soft spot. The Landlord states that the deck damage could also have been caused by the planter. The Landlord states that they did not know the extent of the damage until after the tenancy ended and a professional informed them. The Landlord states that the amount being claimed by the Tenant is excessive. The Landlord states that the use of the deck is not the same as the use of a kitchen or bathroom and that calculations based on square footage is not reasonable. The Landlord states that if the unit did not have a deck there would be very little difference in the rental amount paid as the unit with the deck and that only a small portion of the rent could therefore be allocated to the deck. The Landlord states that the Witness stated that the deck was used by the Tenant. The Landlord states that if there

was any damage to the deck it was due to the Tenant's actions and therefore it was the Tenant's obligation to make the repairs. The Landlord states that the deck was repaired prior to the rental and that the damage was due to the Tenant's negligence.

The Tenant states that no planters were placed on soft spots or to cover dangerous areas. The Tenant refers to a witness letter that describes the deck. The Tenant states that the unit was rented with a useable deck. The Tenant states that there was limited use of the deck until May 2015 when use was discontinued entirely. The Tenant provides a video of the deck.

### Analysis

Section 51(2) of the Act provides that if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy for landlord's use within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Although the Landlord gives evidence of an illness that stopped the move into the unit, the Landlord did not provide any medical documentation to support the medical condition or that a move could not be tolerated due to the medical condition. I also note the Landlord's evidence was that they intended to move into the unit because of the medical condition. The Landlord provides evidence that the renovations to the unit were started in August 2016 after the date that the Landlord states they were told that a move into the unit would be too stressful. These inconsistencies in the evidence leads me to consider that the Landlord's evidence overall is not reliable or credible. The use of the daughter's illness as the reason for both moving and not moving into the unit seems

somewhat staged. Given that the Landlord did not move into the unit, I find that the Landlord did not use the unit for the purpose stated in the Notice and as a result I find that the Tenant is entitled to the compensation of **\$2,980.00**.

Section 7 of the Act provides that where a landlord does not comply with the tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Section 65 of the Act provides that if a landlord has not complied with the tenancy agreement, an order may be made that past rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement. It is undisputed that the tenancy agreement provided that the use and possession of a deck was included with the rent. It is undisputed that the deck required repairs. Although the Landlord maintains that the Tenant caused the damage to the deck I note that the Landlord did not dispute that the Landlord agreed during the tenancy to repair the deck, did not give evidence that the Tenant was told during the tenancy that the deck repairs were up to the Tenant, and did not make any application after the end of the tenancy to claim the cost of deck repairs from the Tenant. I further note the Landlord's evidence that if they had intended all along to rent the unit they would not have repaired the deck to be evidence that the Landlord acts generally poorly in relation to the upkeep of their rental unit. The Landlord provided only oral evidence of causation in relation to the deck and I find this evidence insufficient to establish on a balance of probabilities that the Tenant caused the damage to the deck.

Given the videos, the Tenant's evidence and the Witness evidence about the state of the deck I find that the Landlord failed to provide a fully useable deck to the Tenant as required under the tenancy agreement and that the Tenant is entitled to compensation equivalent to the loss in value of the tenancy agreement. I consider that the loss of a kitchen or bathroom would result in a far greater loss than the loss of a deck and therefore not comparable to a loss based on square footage. However given the Tenant's description of their use of the deck I find that the deck was used as much or as little as any other room in the unit and that the use of square footage is a reasonable

method to determine an overall average loss of a rental area that is not as vital as a kitchen or bathroom. I find therefore that the Tenant is entitled to the loss claimed of **\$3,030.00**. As the Tenant's application has been successful I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$6,110.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$6,110.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: July 21, 2017

---

Residential Tenancy Branch