



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MNDC OLC O FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on March 18, 2019. The Tenants applied for multiple remedies, as follows, pursuant to the *Residential Tenancy Act* (the *Act*):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- an order for the Landlord to comply with the *Act*; and,
- recovery of the filing fee.

Both sides were present at the hearing. All parties provided testimony and were given a full opportunity to be heard, to present evidence and to make submissions. The Landlords stated they got the Tenant's Notice of Hearing package, Amendment and evidence. They did not take issue with the service of these documents.

The Tenants stated that they received the Landlords' evidence package on March 5, 2019. Although the Tenants stated that this evidence was one day late, they are not correct on this matter.

Residential Tenancy Branch Rule of Procedure 3.14 requires that evidence to be relied upon at a hearing must be received by the Residential Tenancy Branch and the respondents (Landlords) not less than 14 days before the hearing. Further, subject to Rule 3.17, the respondent's (Landlords') evidence must be received by the applicant (Tenants) and the Residential Tenancy Branch not less than seven days before the hearing.

As the Respondents on this application, the Landlord was required to ensure the Applicant (Tenants) received their evidence 7 days prior to the hearing, which was done. I find both parties have sufficiently served each other with their evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The Tenants applied for multiple remedies. However, at the start of the hearing, they indicated the only issue they wish to proceed with was for monetary compensation due to the loss of use their pathway to the rental unit. I have amended the Tenants' application to reflect this request. The Tenants' application for monetary compensation will be addressed below.

### Issues to be Decided

- Are the Tenants entitled to compensation for money owed or damage or loss under the Act?

### Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issue identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agreed that monthly rent is \$1,500.00. The Tenant stated although there have been several issues with their tenancy, to date, they are focusing on the months of December 2018, and January 2019. The Tenants stated that as of December 10, 2018, the main pathway and entrance to their rental unit was dug up and torn out. The Tenants stated that this lasted until mid-January 2019, at which point, their main pathway was restored and re-built. The Tenants stated that they had to use alternative pathways to get into the rental unit, which resulted in a loss of use from December 10, 2018, until mid-January 2019. They also stated it made accessing their suite much more difficult.

One of the Tenants stated that on one occasion, he ruined a pair of shoes (muddy and dirty) because he had to use the secondary pathway to get into his rental unit. The Tenant stated that this secondary pathway goes down the other side of the house, and is made of dirt/gravel. The Tenants also expressed that this area was cluttered with renovation debris for several months. The Tenants stated that having to use this alternative pathway, was very inconvenient, and it made it difficult for one of the Tenant's Grandmother to come and visit. The Tenants do not feel they have been adequately compensated for the disruptions, and the loss of access they had to endure.

The Landlord stated that back on August of 2018, they hand delivered a notice of construction to the Tenants and the neighbours, which explained that the Landlords would be building a garage. The Landlords stated that they started building the garage in September of 2018, and preparing the build site. The Landlord explained that the rental suite has two exterior paths, one of them was the main concrete path, and the other was the secondary gravel/dirt path down the other side of the house. The Landlord stated that they had to demolish the main concrete pathway for the suite because they had to dig up and replace some plumbing underground.

The Landlord stated that just prior to removing the Tenants main pathway, they told them on December 8, 2018, that they would have to use the alternative pathway on the other side of the house until construction was finished. The Landlord stated that there was some delays due to weather, and so it took them over a month (from December 10, 2018 until mid-January 2019), to demolish the old path, perform the plumbing upgrades, and reinstall the concrete path. The Landlords stated that for the whole time this was happening, they kept the alternative pathway open. The Landlords stated that although this was an active construction site, they did their best to keep the alternative pathway free and clear.

The Landlords stated on January 5, 2019, the Tenants complained about the secondary path they were being forced to use. The Tenants expressed that one of the Tenants had ruined a pair of shoes in the mud/debris. The Landlord expressed that after this, they took steps to allow the Tenants to use a 3<sup>rd</sup> access point through the garage until the work was completed. The Landlords stated that they kept the garage door open and made sure this path was unlocked for daytime use. The Landlords also stated that they gave the Tenants \$500.00 as a goodwill gesture because of the Tenants' complaint (muddy secondary walkway, ruined shoes).

The Tenants do not feel this is adequate and want 100% rent returned to them for December and January.

Both parties provided photos and videos of the entrances, and the Landlord submitted maps of the different ways to access the suite, given there were multiple options.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. The Tenant must also provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The Tenants are seeking to recover 100% of the rent they paid for the period of December and January. I acknowledge that the Tenants were required to use a secondary pathway which was not properly paved and finished. It appears this resulted in some inconvenience, and some alleged property damage (Tenants damaged shoes). However, I do not find the Tenants' request for a full rent rebate for December and January is reasonable. I agree that the secondary pathway was not ideal. However, the evidence indicates the Tenants still had access to their rental unit. In fact, the evidence shows that not only did they have a second access down the other side of the house, the Landlord also provided another way for them to access the suite (through the garage) once the Landlord became aware of the Tenants issue with the mud, the debris, and his shoes. Despite the alternative access being more inconvenient and likely more dirty, I note the Landlord ensured the suite was always accessible by at least one other way.

Further, I also note that the Landlords communicated that work was going to be completed, and did their best to limit how long this construction went on for. I do not find the amount of time it took to complete the construction, and to repair the main suite pathway, was unreasonable. I find the Landlord took steps to minimize impact on the Tenants and also paid them a sum of \$500.00 because of their alleged damage to some shoes, and the other disruptions.

I find the Tenants have failed to sufficiently demonstrate how their lives were materially impacted such that I could find any further compensation is due. I dismiss the Tenants' application.

I decline to award the Tenants with the recovery of the filing fee since they were not successful with this application.

### Conclusion

The Tenant's monetary claim is dismissed, without leave to reapply.

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: March 19, 2019

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Residential Tenancy Branch