



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Checkmate properties  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RR, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The landlord was represented by manager AK. Witness KN for the landlord also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the Notice of Hearing in October 2020. The tenant confirmed receipt of the landlord's response evidence in December 22, 2020. Based on both parties testimony, I find the Notice of Hearing and the landlord's response evidence were served in accordance with sections 88 and 89 of the Act.

The tenant affirmed her evidence documents were not served to the landlord. The tenants' evidence documents are excluded per section 3.13 of the Rules of Procedure.

### Issues to be Decided

Are the tenants entitled to:

1. an order to reduce the rent for repairs, services or facilities agreed upon but not provided?
2. an authorization to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is their obligation to present the evidence to substantiate their application.

Both parties agreed the tenancy started on December 15, 2018. Monthly rent is \$850.00, due on the first day of the month. At the outset of the tenancy the landlord collected a security deposit of \$412.50 and holds it in trust.

The tenant affirmed she did not visit the rental unit before signing the tenancy agreement, the landlord told her the rental unit has an enclosed balcony and sent her a photograph of the rental unit with a balcony.

The landlord testified the tenant did not ask about a balcony in the rental unit before signing the tenancy agreement and he did not tell the tenant the rental unit has a balcony.

Both parties agreed the tenancy agreement does not have a clause stating there is a balcony in the rental unit.

The tenant said she asked the landlord about the balcony the day after the tenancy started and the landlord told her she will be able to move to the first rental unit that has a balcony when it becomes available.

The tenant is claiming for a rent reduction in the amount of \$300.00 per month because of the missing balcony for 22 months and \$1,000.00 for moving expenses if she needs to move to another rental unit with a balcony. The total amount the tenant is claiming is \$7,600.00.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In the case before me, both parties have provided conflicting testimony regarding the landlord stating there is a balcony in the rental unit. The tenant affirmed the landlord stated there is a balcony, the landlord denied this.

The tenant (applicant) did not provide any documentary accepted evidence to support her claim. The applicant did not call any witnesses.

I find the tenant has failed to prove, on a balance of probabilities, that the landlord stated there is a balcony in the rental unit.

Thus, the tenants' application is dismissed without leave to reapply.

As the tenants were unsuccessful in their application, they must bear the cost of the filing fee.

### Conclusion

I dismiss the tenants' application 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: January 12, 2021

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Residential Tenancy Branch