



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1121911 B.C. LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RR, RP, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on January 13, 2021 (the “Application”). The Tenants applied as follows:

- To reduce rent for repairs, services or facilities agreed upon but not provided
- For a repair order
- To recover the filing fee

The Tenants appeared at the hearing. The Agent for the Landlord appeared at the hearing. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Tenants withdrew the request for a repair order.

I addressed service of the hearing package and evidence of the parties. The Agent confirmed receipt of the hearing package and Tenants’ evidence. The Agent advised that evidence was provided to the Tenants. This evidence was not before me. The Tenants confirmed receipt of the Landlord’s evidence. I allowed the Agent to upload the Landlord’s evidence because it was served on the Tenants.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony of the parties and the documentary evidence submitted. I have only referred to the evidence I find relevant in this decision.

### Issues to be Decided

1. Are the Tenants entitled to a reduction in rent for repairs, services or facilities agreed upon but not provided?
2. Are the Tenants entitled to recover the filing fee?

### Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started August 24, 2020. Rent is \$2,300.00 due on the first day of each month.

The Tenants sought \$3,200.00 as a rent reduction for not having a fence during the tenancy.

The Tenants testified as follows. They were promised a private fenced yard in materials online, advertisements and a video tour. The video tour submitted shows a yard with a fence. They were sent the video tour and found this sufficient to assume they would have a rental unit with a fence. Other units in the complex had fences. When they moved in, they immediately sent an email to the Agent about the absence of a fence and the Agent promised that a fence would be installed. The Landlord indicated to the Tenants that a fence would be installed and was coming. The installation of the fence was delayed. The Tenants followed up about the fence. No fence had been installed as of the date of the hearing.

The Tenants further testified as follows. The rental unit was not what they thought they were getting. They thought they were getting a private fenced yard. They have a dog and had to put their dog on a leash and walk the dog more than planned due to the lack of a fence. People and other dogs would come onto their lawn due to the lack of a fence. The yard was not private. The online materials and video tour were major factors in the Tenants choosing to rent the rental unit. The Landlord breached section 28(a) and (b) of the *Residential Tenancy Act* (the “Act”). Policy Guideline 6 addresses the issues raised.

Neither of the Tenants went to look at the rental unit before renting it. Nor did the Tenants send an agent to look at the rental unit before renting it. The Tenants signed the tenancy agreement without viewing the rental unit. The Tenants acknowledged that they understood that the video tour was of another unit in the complex. The Tenants advised that there is nothing in the tenancy agreement about a fence.

The Agent provided the following testimony and submissions. The Landlord intended to install a fence but there was an issue with supply and delays with the supplies. The Landlord could not install a fence in winter due to the weather. The website referred to by the Tenants is an old website created by the developer in relation to selling the units and was never used by the Agent. The website mentions a private yard and not a fence. A fence is not a material term of the tenancy agreement. The Landlord did their best to respond to the Tenants' complaints about the fence issue.

The Tenants submitted the following relevant documentary evidence:

- A screen shot of a webpage stating that each home has ample outdoor space with a fenced-in backyard. The Tenants have not included the full webpage, only the section of the webpage they are relying on.
- A screen shot of a webpage stating that residences include private yards with a fenced-in backyard. Again, the Tenants have not included the full webpage, only the section of the webpage they are relying on.
- A screen shot of a webpage stating that the homes have private green spaces
- Emails between the parties about the fence issue
- Photos of other units with fences
- The video tour provided to the Tenants
- Photos of the rental unit and yard

The Landlord submitted the following relevant documentary evidence:

- A screen shot of the builder's website which includes a disclaimer about the images on the website
- A photo from the video tour with a note that the fence shown in the video tour is on the neighbour's property
- Emails about the fence issue

### Analysis

Section 65(1)(f) of the *Act* states:

65 (1) Without limiting the general authority in section 62...if the director finds that **a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement**, the director may make any of the following orders...

(f) that past or future rent must be reduced by an amount that is **equivalent to a reduction in the value of a tenancy agreement...**

(emphasis added)

The Tenants seek a rent reduction due to the absence of a fence around the yard of the rental unit. Pursuant to rule 6.6 of the Rules, the Tenants as applicants have the onus to prove they are entitled to a rent reduction.

I am not satisfied the Tenants are entitled to a rent reduction for the following reasons.

I am not satisfied the Landlord, or an agent for the Landlord, promised the Tenants a fence prior to the Tenants signing the tenancy agreement as the evidence does not support this. I am not satisfied the Landlord, or an agent for the Landlord, led the Tenants to believe there was a fence around the yard of the rental unit prior to the Tenants signing the tenancy agreement as the evidence does not support this.

The evidence shows that the Tenants assumed the rental unit would have a fence based on a website and a video tour.

I accept that the website is the builder's or developer's website and not a rental listing as the content of the website provided supports this. Further, the Tenants have not provided sufficient evidence showing that the website was a rental listing or was associated to the Landlord. I do not understand the builder or developer to be the Landlord in this matter. The Landlord is not bound by the representations of the builder or developer. Nor do I find it reasonable that the Tenants relied on the builder's or developer's website without confirming the information with the Landlord, or an agent for the Landlord, and without viewing the rental unit.

The Tenants knew that the video tour was not of the rental unit and therefore I do not find it reasonable that the Tenants relied on the video tour to assume that the rental unit had a fence without confirming this with the Landlord, or an agent for the Landlord, and without viewing the rental unit.

There is no documentary evidence before me showing that the Landlord, or an agent for the Landlord, told the Tenants that the rental unit had a fence or promised the Tenants that the rental unit had a fence prior to the Tenants signing the tenancy agreement.

The tenancy agreement does not address whether the rental unit has a fence or whether the Landlord will install a fence.

Further, I am not satisfied the Tenants took reasonable steps to confirm or ensure that the rental unit had a fence prior to signing the tenancy agreement. The Tenants relied on a website not associated to the Landlord and a video tour of a different rental unit to assume that the rental unit had a fence. There is no documentary evidence before me showing that the Tenants confirmed with the Landlord, or an agent for the Landlord, that the rental unit had a fence prior to signing the tenancy agreement. The Tenants signed the tenancy agreement without viewing the rental unit or sending an agent to view the rental unit. The Tenants did not ensure that the tenancy agreement addressed the issue of a fence.

In the circumstances, I find the Tenants agreed to rent the rental unit without a fence or a promise of a fence. Further, the Tenants agreed to pay \$2,300.00 for a rental unit that did not have a fence. In these circumstances, the absence of a fence did not reduce the value of the tenancy agreement as the tenancy agreement was for a rental unit that did not have a fence.

I do not find it relevant that, after the Tenants signed the tenancy agreement, the Agent said a fence would be installed but one never was because the Tenants rented the rental unit without a fence at \$2,300.00 in rent per month and therefore the absence of a fence did not reduce the value of the tenancy.

In the circumstances, I am not satisfied the Tenants are entitled to a rent reduction.

Given the Tenants were not successful, they are not entitled to recover the filing fee.

The Application is dismissed without leave to re-apply.

### Conclusion

The Application is dismissed without leave to re-apply.

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

Dated: May 07, 2021

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Residential Tenancy Branch