



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: DRI OLC ERP RP MNDC FF

## Introduction

This hearing dealt with an application by the tenants to dispute an additional rent increase; as well as for an order the landlord comply with the Act, regulation or tenancy agreement; orders for emergency repairs and repairs; and a monetary order for compensation for damage or loss.

Despite having been served with the application for dispute resolution and notice of hearing by registered mail on February 6, 2009, the landlord did not participate in the conference call hearing.

## Issue(s) to be Decided

Did the landlord give valid notice of a rent increase within the prescribed amount, and if not, what is the current rent?

Should the landlord be ordered to comply with the Act, regulation or tenancy agreement?

Should the landlord be ordered to conduct emergency repairs or repairs?

Are the tenants entitled to monetary compensation for damage or loss?

## Background and Evidence

The tenancy began in February 2004. The rental unit is a basement suite in a house. The tenants agreed to pay \$650 rent and 33 percent of utilities, and the tenants wrote a letter in February 2004 that set out the monthly rent and utilities. From the outset of the tenancy, the tenants had use of one half of a double garage. The carpets in the living

room and bedroom of the rental unit were very old and in poor condition at the outset of the tenancy.

In February 2008 the house was sold, and the new owners took over as landlords. In October 2008 the landlord told the tenants that they would have to pay increased rent of \$750. The tenants told the landlord \$750 was too much, and they instead began to pay \$700 per month, beginning October 2008. The landlord did not at any time serve the tenants with a notice of rent increase. The landlord also told the tenants they would have to start paying 50 percent of the utilities, but the tenant refused to pay more than 33 percent. The landlord also told the tenants they were not entitled to use the garage any longer.

On November 30, 2008 the tenants provided the landlord with a written request to get the floor and kitchen drawer fixed that month, as well as to dispute the rent increase as not in accordance with the Residential Tenancy Act. The landlord did not carry out any repairs. In the hearing, the tenants provided photographic and testimonial evidence of the need for repairs to the following: the linoleum in the kitchen, bathroom and entrance hallway are clearly very old and in extremely poor repair; the carpeting in the living room and two bedrooms is very old, dirty, stinky, and extremely hard to clean; an exposed pipe in the garage has exposed insulation wrapped around it and needs to be properly covered; the fireplace is unusable because the chimney needs cleaning; a kitchen drawer needs to be repaired or replaced; and a smoke detector needs to be installed. The tenants applied for monetary compensation of \$1200 for living in the rental unit in its current state of disrepair.

### Analysis

Regarding the rent increase, a landlord may only increase the rent up to the amount allowed in the regulations, and must do so within the prescribed time frame using the approved form. When the landlord collects a rent increase that does not comply with the legislation, the tenant may seek to recover the increase. In this case, the landlord did not issue any notice of rent increase. Therefore, the tenants are entitled to recovery of \$50 per month for 5 months, in the amount of \$250.

Regarding orders that the landlord comply, the landlord is bound by the terms of the original tenancy agreement. I find in this case that the tenants were responsible for 33 percent of the utilities, and that one half of the garage, that portion of the garage through which the tenants gain access to their suite, is included in the rental unit. The landlord cannot require the tenants to pay more than 33 percent of utilities or deprive the tenants of a portion of the rental unit, and I hereby order that the landlord comply with those terms of the original tenancy agreement.

Regarding repairs, I accept the tenants' evidence regarding the need for repairs on each of the items claimed. I order that the landlord conduct repairs to (1) cover the exposed insulation on the overhead pipe in the garage, such that it meets reasonable health and safety standards; (2) repair or replace the linoleum and carpeting in the rental unit to bring the flooring up to a reasonable standard; (3) properly clean the chimney so that the fireplace may be safely used; (4) install a smoke detector as required; and (5) repair or replace the kitchen drawer.

In regard to monetary compensation, I find that the landlord was notified on November 30, 2008 of the problems with the flooring and the kitchen drawers, but took no steps to rectify those problems, and the tenants are therefore entitled to compensation of \$100 per month for the four months of December 2008 through March 2009, for a total of \$400. If the landlord does not complete the above-noted repairs in a timely manner, it is open to the tenants to apply for further monetary compensation or a reduction in rent.

### Conclusion

The current monthly rent is and will remain at \$650 per month, until such time as the landlord gives the tenants proper notice in the allowable amount or applies for an additional rent increase.

The landlord is ordered to comply with the tenancy agreement regarding the 33 percent rate of utilities and use of half of the garage.

The landlord is ordered to conduct repairs as set out above.

The tenants are entitled to recovery of overpayment of rent totaling \$250; monetary compensation of \$400 and recovery of the \$50 filing fee for the cost of their application, for a total of \$700. The tenants may deduct this amount from future rent, ie. deduct \$650 from the rent for April 2009 for a payment of \$0, and deduct \$50 from the rent for May 2009, for a payment of \$600.