



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution received by the Residential Tenancy Branch on October 19, 2010 seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and three agents for the landlord.

The parties acknowledged that there had been a previous dispute between the parties that was ruled upon by a Dispute Resolution Officer (DRO) on September 24, 2010 regarding the landlord's claim for a monetary order for damage to the rental unit and to retain the security deposit.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for monies owed or compensation for damage or loss and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

While no copies of tenancy agreements were submitted the parties agreed that the parties entered into a 1 year fixed term tenancy agreement that began on September 21, 2007 and ended on August 31, 2008.

The parties also agreed that they signed a new tenancy agreement in August of 2008 for a 6 month fixed term tenancy that began on September 1, 2008 that converted to a month to month tenancy on March 1, 2008 and that this tenancy ended on February 28, 2010.

The tenant asserts that during the first tenancy the tenant was the first occupant of the newly constructed rental unit and as a result there were some deficiencies in the unit that the builder had to correct. The deficiencies included a crack in the ceiling; tiles in the kitchen needed replacement; the completion of transitions; faucets and bath tub caulking.

The tenant testified that he communicated solely with the owner of the rental unit directly and did not deal with the property manager hired by the owner to manage the tenancy regarding these repairs.

The tenant states that between September and December 2007 he had to vacate the rental for a full two days to allow the crews to repair the transitions; the faucets; and the caulking. He goes on to say that he had to leave for 5 days in January 2008 for the repairs to the ceiling to be completed and 5 days in March of 2008 so the tiles could be replaced.

The landlord's agents testified that they knew nothing of these issues and that even when the parties entered into the new tenancy agreement the tenant said nothing about any compensation for these matters. The tenant states that he specifically asked the owner of the rental unit for compensation and the owner said he would consider it but then the tenant never heard anything else about it.

The tenant testified that he does not believe the bill for cleaning the rental unit to be an accurate reflection of the cleaning costs at the end of the tenancy and that he seeks reimbursement for those costs. He also claims for the costs of purchasing replacement hardwood flooring that he left in the rental unit when he vacated.

In the previous decision between these parties the DRO states: "The landlord referenced a Deposit Reconciliation form that was not provided as evidence. The landlord testified that this report indicated that on February 24, 2010, the tenant had signed agreeing to deduction from the deposit for cleaning, carpet cleaning, garborator repair and minor wall repairs."

Later in that same decision the DRO writes: "The landlord submitted a copy of a September 15, 2009 letter sent to the tenant in relation to the floor damage, directing the tenant to make repairs by October 31, 2009. The tenant did purchase some hardwood flooring; photos of which the landlord supplied as evidence. The tenant attempted to repair the floors but the work was not adequate. The owner attempted to sell the unit and has now rented it again and would like to have the repairs properly completed."

### Analysis

Section 60(1) of the *Act* states that an Application for Dispute Resolution must be made within 2 years of the date that the tenancy to which the matter relates ends. I find that because the parties entered into a new written tenancy agreement that took effect on September 1, 2008, officially ending the previous tenancy on August 31, 2008.

As per the tenant's testimony, the events that he seeks compensation for regarding having to vacate the rental unit when deficiencies were being repaired all occurred in that first tenancy that ended August 31, 2008 and the tenant would have to have applied for dispute resolution prior to September 1, 2010.

As the tenant did not apply until October 19, 2010 I find the tenant failed to file an Application for Dispute Resolution in accordance with Section 60(1) and therefore pursuant to Section 60(2) a claim arising under this *Act* or tenancy agreement in relation to the tenancy ceases to exist.

*Res judicata* is the doctrine that an issue has been definitively settled by a judicial decision. The three elements of this doctrine, according to Black's Law Dictionary, 7<sup>th</sup> Edition, are: an earlier decision has been made on the issue; a final judgement on the merits has been made; and the involvement of the same parties.

In relation to the tenant's claim for reimbursement for cleaning charges and for hardwood flooring, as the previous decision dealt with both of these matters I find them to be *res judicata*.

In the case of the cleaning charges, I find they were considered by the DRO as per the landlord's testimony in that hearing that indicates that parties agreed to the deductions for cleaning, carpet cleaning, garborator repair and minor wall repairs.

Despite the tenant's claim that seeking reimbursement for the flooring that he purchased but was never compensated for was not considered in the previous hearing; I find upon review of the previous hearing decision that the DRO did consider the fact that the tenant had purchased hardwood flooring and therefore a final judgement on the merits has been made.

I further note that had the tenant had concerns about the cleaning amounts and reimbursement for hardwood flooring, he was given an opportunity to present his case at the previous hearing held.

### Conclusion

For the reasons noted above, I dismiss the tenant's Application in its entirety.

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: February 22, 2011.

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Residential Tenancy Branch