



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PRIMA PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** *MNSD, MNDC*

### **Introduction.**

On March 26, 2013 a hearing was conducted to deal with an application by the landlord pursuant to the *Residential Tenancy Act*, for a monetary order for the cost of cleaning, painting, and carpet replacement. The landlord also applied to retain the security deposit in partial satisfaction of the claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

In a decision dated March 26, 2013, the landlord was granted a monetary order. On April 29, 2013, the tenant applied for a review of this decision on the grounds that she had new and relevant evidence that was not available at the time of the original hearing and that she had evidence that the decision was obtained by fraud.

Based on the documents attached to the tenant's application, the reviewing Arbitrator found that the tenant had submitted information regarding the age of the rental unit that differed from what the landlord had presented during the original hearing. Accordingly, the tenant was granted a review hearing. The review hearing was conducted on this date. This hearing dealt solely with the issue of the age of the rental unit at the time the tenancy started. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Was the rental unit brand new at the time the tenancy started?

### **Background and Evidence**

The landlord stated that this housing complex consists of a building that contains 77 units. The landlord was also the developer of this project. The building and common areas were substantially completed in 2007. The deficiencies and final touch ups to the rental units are usually done just prior to occupation. Some of the units were listed for sale. This rental unit was not listed for sale.

The landlord stated that in 2008, due to the slow estate market, there was a large inventory of unsold units. The landlord decided to rent some of the units. This unit was advertised in November 2008. The landlord filed a copy of the original advertisement. The tenant testified that she viewed the rental unit in November 2008, signed a tenancy agreement on January 30, 2009 for a move in date of March 01, 2009.

The landlord stated that this tenant was the first occupant of the rental unit. The tenant stated that it appeared as if someone had lived in the unit because she observed some “layers” of paint and concluded that the unit had been recently painted over at that time. She also stated that the carpet was stained. The landlord argued that the move in inspection was conducted in the presence of the tenant and the report indicating that all areas were new was signed by the tenant. There is no mention of a stained carpet. A copy of this report is on file.

The landlord also filed documents from the Home Warranty Program dated March 05, 2009 that confirm that the commencement of the warranty was February 2009. The landlord pointed out that the warranty commences upon occupation of the rental unit and the tenants were the first to occupy the rental unit.

### **Analysis**

Based on the sworn testimony of both parties and the documents filed into evidence, I find on a balance of probabilities that it is more likely than not that the rental unit was completed for occupation in November 2008 and that the tenant moved in on March 01, 2009, making her the first occupant of the rental unit. I find that the building and common areas may have been substantially completed in 2007, but based on the Home Warranty commencement date, I find that this unit was first occupied after February 20, 2009. Therefore I find that the unit was new at the start of the tenancy and the calculations that determined the amount of the monetary order are correct.

### **Conclusion**

The decision and order dated March 26, 2013 is confirmed and is in full force and effect. 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: May 30, 2013

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Residential Tenancy Branch