



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC OLC RP RR O FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- as well as any other remedy that is available under the *Act*; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Two representatives attended on behalf of the landlord. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award for losses arising out of this tenancy?

Is the tenant entitled to an order that the landlord make repairs to the rental unit?

Is the tenant entitled to an order that the rent be reduced for repairs or services not provided in accordance with the tenancy agreement?

Is the tenant entitled to an order that the landlord comply with the *Act* and to continue the fixed term tenancy?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

This fixed term tenancy began on June 1, 2015 with a rental amount of \$1900.00 payable on the first of each month. The landlord continues to hold a \$950.00 security deposit paid when the lease agreement was signed April 23, 2015. A copy of the residential tenancy agreement ("the lease") was submitted as evidence for this hearing. That agreement included a term regarding the "right to renew", as follows,

The Landlord agrees that provided that the Tenant duly and regularly pays the rent reserved by this Lease and observes and performs all covenants, conditions and agreements herein contained on the part of the Tenant to be observed and performed the Tenant may renew this lease for a further term of (to be determined) upon the same terms and conditions as contained herein EXCEPT for rent which shall first be agreed to in writing. The Tenant shall exercise the Tenant's right to renew hereunder by the giving of written notice of the Tenant's intention to renew to the Landlord at least three (3) months prior to the expiration of the Term. Tenant's failure to obtain written agreement of renewal or extension of this Lease from the Landlord, shall confirm end of tenancy at the expiry of the Lease.

**(emphasis added)**

The tenant testified and submitted evidence to show that he had sent, by registered mail, his intention to renew this lease on February 21, 2016. He testified that he relied on this clause in determining that he wished to rent this unit. He testified that the nature of his employment required him to obtain a long term lease and that was his belief and intention when signing this lease with the tenant's right to renew. The landlord testified and submitted evidence to show that they had sent, by mail and email, at least three notices to the tenant indicating that they would not agree to renew the lease. The landlord testified that he paid \$20.00 to the tenant for any inconvenience at the outset of the tenancy.

The tenant testified that the unit was not sufficiently clean at the outset of the tenancy. He referred to a condition inspection report completed and signed by both parties at the outset of the tenancy. The tenant testified that he signed a blank copy of the report and (trusted) the agent to do a thorough inspection. The condition inspect report indicated that the unit was overall in good condition but noted 3 items written by Landlord NH. Those items were listed as;

1. Fix gauges, chips and scrapes on walls
2. Fix Blinds in Master Bedroom
3. Fix or Replace (*illegible*) carpets

Landlord NH testified that the tenant did a very careful inspection of the unit at move-in and was satisfied with the condition of the rental unit. He testified that the three items noted on the report were written to ensure the tenant would not be held responsible for them at the end of tenancy. Beside the three items listed, a work order number was written.

The tenant submitted that the rental unit has mold, particularly under the carpet. He submitted a copy of a \$145.95 invoice for carpet cleaning dated August 25, 2015 as well as assessments from two mold inspectors indicating “no mould growth” on carpet and that a “visual examination shows what may indicate the presence of mould on some of the building surfaces”. Both assessments referred to standard steps to be taken if mould appears in a home. The tenant submitted that there is mould under the carpet in the rental unit and that he believes the landlord was aware of the mold within the unit but provided no evidence in support of that position.

The tenant testified that the mold and the carpets are the two most concerning issues for him. He testified that there is “black goo” that reappears after the carpets and some other surfaces have been cleaned. He also testified that the carpets have bothersome yellow stains on them. The tenant submitted photographic materials, without dates, that show the condition of the rental unit. The landlord testified that she received these materials but had not looked at them. The photographs showed;

- some yellow-ish stains on the carpet;
- some dirt or debris on the carpet; and
- an unclean sundeck.

### Analysis

With respect to the tenant’s right to renew, he submitted that the wording of the residential tenancy agreement provides that he may exercise his right unilaterally. He describes the wording as exceptional and his intention to obtain a long term tenancy. However, the landlord relies on the last phrase within the right to renew clause: “Tenant’s failure to obtain written agreement of renewal or extension of this Lease from the Landlord, shall confirm end of tenancy at the expiry of the Lease”.

There is no dispute between the parties that this tenancy began as a one year fixed term tenancy to end on May 31, 2016. Residential Tenancy Policy Guideline No. 30 provides direction on the definition and terms of a fixed term tenancy:

A fixed term tenancy is a tenancy where the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined expiry date...

Section 44 of the *Act* addresses how a tenancy ends, including a fixed term tenancy:

44 (1) A tenancy ends only if one or more of the following applies:

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy...

Policy Guideline No. 30 also indicates that, a landlord and tenant may agree to renew a fixed term tenancy agreement with or without changes, for another fixed term. In accordance with the *Act* and the Policy Guidelines, the tenancy agreement signed by both parties in this matter states that

... The Tenant shall exercise the Tenant's right to renew hereunder by the giving of written notice of the Tenant's intention to renew to the Landlord at least three (3) months prior to the expiration of the Term. Tenant's failure to obtain written agreement of renewal or extension of this Lease from the Landlord, shall confirm end of tenancy at the expiry of the Lease.

***(emphasis added)***

The tenant submitted that he has an unconditional right to renew the lease and that he has the sole discretion to exercise this right. The clause described by the tenant as a "right" to renew is an option available to the parties. In this form of tenancy, a term is fixed for the assurance of both parties. With few exceptions, this tenancy will continue to the end of its term, allowing the tenants and landlords the security that comes with this fixed period of time. This form of tenancy also schedules an end or expiration date with the option to renew if both parties agree to set a new term for the tenancy.

In this case, the landlords have not agreed to renew this rental agreement. Pursuant to the legislation and the terms of this tenancy agreement, if the tenant does not obtain written agreement to renew the lease from the landlord, the tenancy will end at the expiry date on the original agreement. When the tenants and landlord signed the rental agreement for a term of one year, both parties agreed to all the terms within that agreement as long as they comply with the *Act*. Therefore, as the landlords have clearly stated that they have not agreed to renew the rental agreement, this agreement will end as of May 31, 2016.

I dismiss the tenant's application to have the landlord comply with the *Act*, specifically to continue the fixed term tenancy. I find that the landlords are in compliance with the *Act* with respect to the term of this tenancy.

The tenant submitted that the unit was not sufficiently clean at the outset of the tenancy. He relied on photographs taken at least two months after his move-in to the unit. A condition inspection report was completed and signed by both parties at the outset of this tenancy. Pursuant to section 21 of the *Residential Tenancy Regulations*, the condition inspection report is the best evidence of the state of repair and condition of the premises on the date of the inspection unless a party is able to refute that evidence. In this case, the tenant testified that he signed a blank copy of the report. The tenant entrusted the landlord to fully determine the condition of the unit after a quick look-over as he was very busy. Months after that (as, according to his testimony, he was again very busy), the tenant took photographs to document the state of the unit. Pursuant to the *Residential Tenancy Regulations*, I find that the condition inspection report provides the best evidence with respect to the condition of the unit in this case.

The condition inspect report indicated that the unit was overall in good condition and acceptable to the tenant at move-in. However, three items are noted within the condition inspect report. Each item listed begins with the word "fix" and a work order number was placed beside these items. I find that, based on the evidence provided for this hearing, the intention was to fix these three items noted at the outset of the tenancy. I find that the wording in this section is plain and clear. I find that, if the intention were not to repair these three items, the wording would have been different. The evidence submitted by the tenant by way of ongoing correspondence with the landlords supports this finding. I find that the correspondence provides evidence that the tenant made ongoing requests for these items to be addressed.

The tenant further claims that the rental unit has mould however the evidence is not definitive. The letters of assessment submitted by the tenant do not state that there is mould within the rental unit: one report merely states that there *may* be mould. I find the tenant has not shown sufficient evidence to support a financial loss as a result of this tenancy and actions or omissions by the landlord with respect to mould. However, as the landlord agreed to fix gouges, scrapes, chips and scrapes on the walls; to fix the blinds in the master bedroom; and to fix or replace carpets, I find that the tenant should be entitled to have these repairs undertaken.

As part of the tenant's testimony, he indicated that the walls no longer require repair. Therefore, I order the landlord both fix the blinds in the master bedroom and fix or replace the carpets.

I find that the tenant is entitled to a rent reduction given that the landlord has yet to make the repairs to the unit promised at the outset of this fixed term tenancy. I award the tenant a nominal amount of \$1900.00 for the landlord's failure to repair as agreed at the outset of tenancy for 10 months.

To summarize, I find that the tenant is entitled to an order that the landlord make repairs in the circumstances. I find that, with respect to the end of the fixed term tenancy, the landlord has complied with the requirements of the *Act* and the tenant is not entitled to an order that the landlord comply or that the landlord be required to agree to continue this tenancy. I find that the tenant is entitled to a rent reduction in the amount of \$1900.00.

As the tenant has been partially successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee for this application from the landlord.

### Conclusion

I issue a monetary award in favour of the tenant in the amount of \$2000.00.

I order that the landlord fix the blinds in the master bedroom by April 11, 2016.

I order that the landlord fix or replace the carpets by April 25, 2016.

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: March 29, 2016

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Residential Tenancy Branch