



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KEVINGTON BUILDING CORPORATION LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MND, MNR, MNSD, FF

### Introduction

These hearings were convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the corporate Landlord on February 25, 2016.

The Landlord applied for an Order of Possession for unpaid rent and for a Monetary Order for: unpaid rent; damage to the rental unit; to keep the Tenant’s security and pet damage deposits; and, to recover the filing fee from the Tenant.

### Preliminary Issues

The parties appeared before a different Arbitrator on October 17, 2016. That hearing had to be adjourned as the Landlord’s documentary evidence was not before the Arbitrator. The Arbitrator informed the parties that he would not be hearing the reconvened matter but required that the Landlord provide the documentary evidence again for this reconvened hearing. The parties were issued with an Interim Decision dated October 17, 2016. As that Arbitrator did not hear any evidence in this case, he was not seized of the matters, and the file was scheduled for determination by me.

An agent for the Landlord (the “Landlord”) and the Tenant appeared for the reconvened hearing and provided affirmed testimony. I confirmed with the parties that the evidence the Landlord was required to provide was now before me and the Tenant confirmed that he had not provided any documentary evidence prior to the hearing on October 17, 2016.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence relating to the issues to be decided.

During the hearing, the parties confirmed that the Tenant went by two names and no objections were raised in relation to this Decision being made in both of the Tenant's names which were confirmed during the hearing. Also during the hearing, the Landlord withdrew the portion of the monetary claim for the replacement of the light fixture in the amount of \$170.03 which is hereby dismissed.

#### Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent for breakage of the fixed term tenancy?
- Is the Landlord entitled to monetary compensation for damage to the rental unit?
- Is the Landlord allowed to keep the Tenant's security and pet damage deposits in partial satisfaction of the monetary claim?

#### Background and Evidence

The parties agreed that this tenancy started in April 2011. The parties entered into successive one year fixed term tenancies. The last fixed term tenancy agreement shows a start date of April 1, 2015 for a fixed term of one year with an end date of March 31, 2016. The signed tenancy agreement provided into evidence shows that at the end of that fixed term, the tenancy was to end and the Tenant was required to vacate the rental unit.

Total rent for the last tenancy agreement was payable by the Tenant in the amount of \$1,630.00 on the first day of each month. The Tenant paid \$787.50 each for a security and pet damage deposit, both of which are herein referred to as the "Deposits". The Landlord still retains a total of \$1,575.00 in the Deposits.

The parties completed Condition Inspection Reports ("CIR") during each tenancy and the move-in CIR for the latest tenancy agreement was provided into evidence which was completed on April 1, 2015. The move-out CIR was completed on January 19, 2016 by the Landlord with an agent for the Tenant.

The Landlord testified that according to her, the Tenant vacated the rental unit at some point between January 6 and January 10, 2016. The Landlord explained that the Tenant had verbally informed her during the start of December 2015 that he was going to be vacating the rental unit. The Landlord responded to the Tenant that he had a requirement to provide the Landlord with 30 days of written notice but that she would try and re-rent the unit straight away and that if she could not the Tenant would be responsible for January 2016 rent.

The Landlord testified that she got an email from the Tenant on December 9, 2015 who informed her that he will be moving out and that "This unit will be available Jan 15<sup>th</sup> 2016 as per your request". The email, which was provided into evidence, does not provide for a specific move out date by the Tenant. The Landlord testified that she had not given permission or requested the Tenant to leave prior to his requirement to give proper 30 days written notice.

The Landlord testified that the Tenant put a stop payment to his January 2016 rent and as a result, she served the Tenant with a notice to end tenancy for unpaid rent on January 7, 2016 by posting it to the Tenant's door. The Landlord testified that she was unable to re-rent the unit for January 2016 and as a result claims for unpaid rent for that month of \$1,630.00.

The Tenant testified that he had verbally informed the Landlord on December 2, 2015 that he was going to be vacating the rental unit in the first week of December 2015 and during this time he vacated it so therefore he should not be responsible for January 2016 rent. The parties confirmed that the Tenant provided his forwarding address by email to the Landlord on February 11, 2016.

The Landlord testified that the Tenant had painted some of the walls in the rental unit a different colour which he failed to return to the original colour at the end of the tenancy. The Landlord referred to the addendum to the tenancy agreement at section 2 on painting; this section states that the tenant is responsible for returning the color of the walls to the original colour if this is changed during the tenancy by the Tenant. As a result, the Landlord had to have the walls painted for a cost of \$230.00 as evidenced by an invoice. The Landlord referred to photographs showing the painted walls in the living room, hallway and bedroom. The Tenant testified that he had not re-painted the rental unit at the end of the tenancy back to its original colour but submitted that not all the walls in the rental unit were painted in that color.

The Landlord testified that the Tenant failed to clean the rental unit at the end of the tenancy. The Landlord referred to the move-out CIR which identified the cleaning that was required to be done as denoted by the "DT" code for "dirty" throughout the move-out CIR. The Landlord stated that the Tenant's agent also signed the move-out CIR to state that it was an accurate representation of the condition of the rental unit and that cleaning was required. The Landlord claims \$300.00 for the cost of professional cleaning as evidenced by an invoice for this amount. The Tenant testified that he had spent time and cleaned the rental unit at the end of the tenancy and that the cleaning the Landlord had referenced was due to reasonable wear and tear.

The Landlord claims for the replacement of the bedroom floor laminate in the amount of \$1,580.00 as estimated by a quote for install and materials. The Landlord testified that the Tenant had caused damage to the floor during the years he occupied the rental unit. The Landlord provided photographic evidence to show the extent of the damage which included areas where the top layer of the laminate had been damaged.

The Landlord testified that the laminate panels cannot be repaired or individually replaced as the floor is five years old. The Tenant testified that the flooring was brand new at the start of the tenancy but the damage caused to the flooring being claimed by the Landlord was due to wear and tear as the Tenant had a table in the bedroom that rubbed on the floor over the many years of the tenancy. The Tenant submitted that the flooring was soft and sensitive and that when he brought this issue to the Landlord during the tenancy, the Landlord told him not to worry about it. The Landlord disputed the Tenant's testimony that the Tenant was told not to worry about the damage to the flooring.

### Analysis

Although the *Residential Tenancy Act* (the "Act") does not provide that a forwarding address be served by email, I find the Landlord received the Tenant's forwarding address on February 11, 2016. The Landlord made the Application to keep the Tenant's security deposit on February 25, 2016. Therefore, I find the Landlord filed it within the 15 day time limit stipulated by Section 38(1) of the Act.

I have carefully considered the parties' testimony and the Landlord's documentary and photographic evidence on the balance of probabilities as follows. In relation to the Landlord's claim for unpaid rent, a fixed term tenancy is designed to ensure that parties adhere to the agreed time period of occupancy. Section 45(2) (b) of the Act states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is **not** earlier than the date specified in the tenancy agreement as the end of the fixed term. Section 44(1) (b) (c) of the Act states that a landlord and a tenant may agree in writing to end the tenancy.

Based on the foregoing, I find the Tenant failed to abide with the terms of the tenancy agreement and the requirements of the Act in relation to the fixed term tenancy and ended the tenancy prematurely before it was due to expire on March 31, 2016. This is a fundamental breach of the agreement and the Act. Furthermore, I find that based on the evidence before me, the Tenant did not put the Landlord on sufficient notice of the exact date he was going to be vacating the rental unit. This is because the email sent to the Landlord by the Tenant on December 9, 2016 does not provide for the date the Tenant

was going to vacate the rental unit and therefore, the Landlord's obligation to mitigate loss of rent for the breaking of the fixed term tenancy would not have started until the Landlord had been put on sufficient notice of this in writing by the Tenant. There is also insufficient evidence before me that the Landlord agreed in writing that the Tenant could end the tenancy by mutual agreement. Therefore, I grant the Landlord's claim for unpaid rent for January 2016 in the amount of **\$1,630.00** which the Tenant is liable for.

In relation to the Landlord's claim for lack of cleaning and damages to the rental unit, Section 37(2) (a) of the Act requires a tenant to leave the rental suite reasonably clean and undamaged at the end of the tenancy. In addition, Section 21 of the Residential Tenancy Regulation states that a CIR can be used as evidence of the state of repair and condition of the rental suite, unless a party has a preponderance of evidence to the contrary.

In relation to the Landlord's cleaning costs, I am satisfied by the Landlord's evidence that the Tenant failed to clean the rental unit at the end of the tenancy. The Tenant's testimony that he did clean the rental unit is contradicted by the move-out CIR which was signed by the Tenant's agent as being accurate and showing that the rental unit required to be cleaned. Therefore, I grant the Landlord's claim for cleaning costs in the amount of **\$300.00** pursuant to the invoice provided.

Policy Guideline 1 on the responsibilities of landlords and tenants states that any changes to the rental unit not explicitly consented to by the Landlord must be returned to the original condition; if the tenant does not, then the landlord may return the rental unit to its original condition and claim the cost against the tenant. With respect to the Landlord's cost to restore the original color of some of the walls in the rental unit, I accept that the Tenant failed to abide by the term of the tenancy agreement addendum which laid out the Tenant's requirement to return the color back to the original one at the end of the tenancy. Therefore, the Landlord's claim in the amount of **\$230.00** is granted.

In relation, to the Landlord's claim for the damage to the bedroom laminate flooring, I have examined the Landlord's photographic evidence and I find the damage detailed in the photograph provided goes beyond that of reasonable wear and tear. The Tenant could have mitigated this loss by using protective pads or mats to ensure the table/chair legs were not causing excessive wear and tear on the flooring. I find that the Tenant failed to provide a preponderance of evidence to show that the damage was due to reasonable wear and tear. In determining the amount to be awarded to the Landlord for this portion of the claim, I turn to Policy Guideline 40 which details the useful life of building elements in a tenancy. This guideline provides that the useful life of hardwood flooring is 20 years. The parties agreed that the flooring was brand new at the start of

the tenancy and that five years of this tenancy had lapsed before the tenancy ended. Accordingly, I reduce the Landlord's award by 25% of the cost of the invoice provided to the amount of **\$1,185.00** for the replacement of the flooring.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the **\$100.00** Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlord is **\$3,445.00**.

As the Landlord already holds **\$1,575.00** in the Tenant's Deposits, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is issued with a Monetary Order for the remaining balance of **\$1,870.00**.

Copies of this order are attached to the Landlord's copy of this Decision. This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make voluntary payment. The Tenant may also be held liable for any costs incurred by the Landlord for enforcing the Monetary order.

### Conclusion

The Tenant broke the fixed term tenancy and failed to leave the rental unit reasonably clean and undamaged. Therefore, the Landlord may keep the Tenant's security deposit and is issued with a Monetary Order for the remaining amount of \$1,870.00.

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: December 08, 2016

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Residential Tenancy Branch