



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VANTAGE WEST REALTY INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: MNR MND MNDC MNSD FF

### **Introduction:**

Both parties made applications for damages and both attended the hearing, the landlord with her professional agent. They each gave sworn testimony that they received each other's Application. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for compensation for breach of a material term of the tenancy agreement. The tenant applies for damages and loss they suffered due to actions of the landlord. Both parties request recovery of their filing fees.

### **Issue(s) to be Decided:**

Has the landlord has proved on a balance of probabilities that the tenant breached a material term of the tenancy agreement and caused them loss? How much loss have they proven?

Has the tenant proved on a balance of probabilities that they suffered damages and loss caused by act or neglect of the landlord? If so, to how much compensation have they shown entitlement?

Are the parties entitled to recover the filing fees?

### **Background and Evidence:**

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. A large amount of documentary evidence was submitted by both parties. I explained the procedure of the hearing and they cooperated by answering questions on the documents and clarifying the facts. It is undisputed that the tenancy that the tenancy commenced June 1, 2015, that monthly rent was \$2300 and a security deposit of \$1150 and a pet damage deposit of \$1150 were paid. The deposits are still in trust to be dealt with in accordance with the time limitations of section 38 of the Act.

With the lease in evidence is a letter from the landlord dated May 12, 2015 in which she states that in consideration of being the chosen applicant the tenants put forth an offer to refinish/repair the hardwood floors in the home at no cost to the landlord upon moving in or taking possession on June 1, 2015. It states the landlord agrees to the offer and are prepared to pay for material costs only which would be reimbursed by providing the original receipt. Both parties acknowledged this was the offer and acceptance. They agreed there was a bidding war at the time and it was hard to find housing in the area. The tenants who have a professional finishing

company said the floors were supposed to be done before move-in but they were in transition for 6 months between provinces so they did not have time initially to do the floors and have not done them to date.

The following facts were not disputed by the parties. The house is described as 4000 sq.ft. on 131/2 acres. On or about May 24, 2016, the landlord had an offer from a friend to have another friend fell some trees on the property. He was not hired or paid but the landlord gave consent. It is undisputed that he was not licensed or insured. One tree fell on the house while he was felling the trees. It damaged part of the deck, the room at that corner of the house and the roof. The insurance company was involved and was going to use their restoration company but the tenants recommended a company that they could trust with access to their home while they were not present. The insurer used this recommended company. The landlord said this resulted in delay as the recommended company was not available for some time. They asked the tenant if they should get another company but the tenants chose to wait. The tenant said the company put other jobs on hold and was able to start in July 2015. The tree damage resulted in two leaks to the roof which added to the time.

The work continued until September 15, 2016 according to the landlord but the tenant said the final inspection was not until the middle of October 2015. There was a lot of clean up and the tenant offered to do this, rather than the restoration company. He thought the insurer would reimburse him but he had no agreement with them. The landlord said the insurer reimbursed her \$457.50 based on one person's labour for 20 hours. She said the tenant had insisted he do the cleanup rather than the restoration company and said he could use the wood from the felled trees. She said no money was discussed but the tenant said they did not trust others to come into their home. The tenants confirmed that their experience was that it was unwise to allow tradespeople to access your home unless you had a trust relationship.

On September 22, 2016, the landlord wrote a letter to the tenant offering \$1800 as compensation for a 'one time final settlement' inclusive of all and any of the issues which you brought forth since the incident occurred i.e. clean up hours, hydro, inconvenience of limited use of the deck/patio and dog run and your loss of quiet enjoyment. She enclosed a cheque in that amount. On September 30, 2016, the tenants replied by email, "After consideration, we have decided to accept your offer of the payout of \$1800 for everything". They went on to say that in accepting it, they would like to renew their lease and "disclude" us from refinishing the floors. They explained they meant they were to be excused from their contract to refinish the floors. They did not cash the cheque because they waited to see if she would resign the lease and agree to excuse them from their contract. The landlord said she did not think releasing them from their contract was part of the settlement.

The landlord served a Two Month Notice to End Tenancy and the tenants have vacated. The tenants offered to refinish the floors before vacating but the landlord refused as relations had become adversarial and it seemed that the matter might go before the Residential Tenancy Branch. Her Notice was also based on her doing required renovations to the home. Apparently

the tenants have filed an Application pursuant to sections 49 and 51 of the Act so I declined to hear any evidence of their dispute on the matter of the Notice.

The landlord said she had received from the insurer \$2300 representing one month of rental loss to be used at her discretion plus compensation/repair for damages to the home. She paid \$1368 to the tenants for loss of some of their personal items because they did not get tenant insurance as recommended in their lease and gave them the cheque for \$1800 which she thought settled all the other matters between them and which they had accepted in writing. She claims \$5500 for cost of refinishing the floors and enclosed two quotes. She said she arrived at the cost she claims by averaging them. She also requests \$300 for her agent's fee and to recover the filing fee.

The tenants request compensation as follows:

1. \$756.00 cleanup of trees/glass
2. \$3722.50 total of 35% rent reduction for the 4 1/2 months loss of peaceful enjoyment and loss of use of some of the property including the deck.
3. \$300 cleanup after trades doing restoration. Workers coming in and tracking dirt plus dust to be cleaned constantly.
4. \$50 for increased electric costs.
5. \$1625.00 for lost work hours to do arbitration
6. \$1600.00 for lost work hours when had to be home to open it for trades or supervise them
7. \$28 for an ink cartridge to prepare documents for arbitration
8. \$14 for registered mail fees for serving documents
9. \$100 filing fee.

A huge amount of documents were filed by the parties. While all evidence has been considered, only evidence relevant to the Decision is noted. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

### **Analysis**

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I find the tenant's violated their tenancy arrangement by not refinishing the floors as promised. Although they said they offered to refinish them before they left, this offer was over a year after the floors should have been finished according to the testimony. Both parties agreed they were to be refinished prior to move-in on June 1, 2015. I find the landlord's evidence credible that they did not want to entrust refinishing the floors after the relationship had become hostile between the parties. I find the tenants liable to reimburse the landlord for refinishing the floors. However, I find that two estimates were provided and the second one specifies it is for labour only at a cost of \$4557.00. I find the higher quote includes some materials. As the agreement with the tenants was for labour only, I find the landlord entitled to recover \$4557.00 for refinishing floors.

As discussed with the parties in the hearing, there are no awards for agents or litigation costs other than reimbursement of the filing fee pursuant to section 72 of the Act. The application process is designed so private individuals can handle it and be affordable. Therefore, I find the landlord not entitled to recover her agent's fee.

In respect to the tenant's claim, I find the landlord violated the Act by not arranging maintenance pursuant to section 32 in a safe manner and the tenants suffered loss as a tree fell on the house as a result of the landlord's act of getting a volunteer to fell trees. However, I find on September 22, 2016, the landlord offered \$1800 to the tenants as compensation for a 'one time final settlement' inclusive of all and any of the issues which you brought forth since the incident occurred i.e. clean up hours, hydro, inconvenience of limited use of the deck/patio and dog run and your loss of quiet enjoyment. She enclosed a cheque in that amount. I find that after several days of consideration, the tenants replied by email, on September 30, 2016 "After consideration, we have decided to accept your offer of the payout of \$1800 for everything". They went on to say that in accepting it, they would like to renew their lease and "discluse" us from refinishing the floors. I find this was an offer and acceptance of \$1800 compensation "for everything" as full settlement so I find the tenant not entitled to recover all the compensation they are claiming on their application for these items. I find they did not put a precondition on their acceptance but said they "would like" to renew their lease and be excused from their contract which the landlord said was not a term of the offer she made that was accepted. Furthermore, I find the tenants received already compensation for damage of personal property in the amount of \$1368. I find the landlord was under no obligation to provide this as the landlord is not an insurer of the tenant's property and the tenants chose not to get tenant insurance as recommended. I find in total the tenants received \$3168.00 from the landlord in compensation for this incident while the landlord received \$2757.50 for cleanup costs and discretionary funds from the insurer to deal with rental issues plus the repair of the home. I find the tenants have been adequately compensated.

In respect to the tenants' claims for the process of arbitration such as their hours to prepare, registered mail costs and an ink cartridge, I find as stated above, section 72 allows for recovery of the filing fee and not for these other costs of the process.

### **Conclusion:**

I find the landlord is entitled to a monetary order as calculated below. The security deposit and pet damage deposit will remain in trust to be dealt with within 15 days of the later of the tenant vacating and providing a forwarding address in writing. I find the landlord is also entitled to recover filing fees paid for this application.

I find the tenant also entitled to recover filing fees as their application had some merit. I find them entitled to the \$1800 compensation to which they agreed.

**In respect to the tenants' compensation, I HEREBY ORDER the tenant to either cash the \$1800 settlement cheque from the landlord or obtain a replacement if it is outdated or destroyed.**

**Calculation of Monetary Award:**

Landlord –floor refinish labour cost only	4557.00
Filing fee	100.00
Less tenant filing fee	-100.00
<b>Total Monetary Order to Landlord</b>	<b>4557.00</b>

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: December 01, 2016

---

Residential Tenancy Branch