



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Vanak International Properties (Vanak Realty) Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPB, OPM, MND, MNSD, FF

### Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking an order of possession and a monetary order.

The original hearing was conducted via teleconference and was attended by an agent of the landlords; one of the landlords; and the tenant. As per my Interim Decision of March 3, 2017 the hearing was adjourned to allow the landlords to serve the tenant and the Residential Tenancy Branch with their evidence. The hearing was reconvened on March 31, 2017 by teleconference and was attended by two agents for the landlord and the tenant.

The landlords submitted their evidence to the Branch on March 2, 2017 as ordered in my Interim Decision. The landlords also submitted copies of their email attempts to serve the tenant with their evidence and their email request for the tenant to respond to their evidence emails.

The tenant confirmed at the start of the reconvened hearing that he had received the landlords' evidence via email despite not providing the landlord with confirmation that he had received the evidence.

The parties confirmed the tenant vacated the rental unit on June 26, 2016 as a result the landlords do not require an order of possession. Therefore, I amend the landlords' Application for Dispute Resolution to exclude the matter of possession.

### Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for compensation for repairs to the rental unit; for compensation for strata fines; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of

the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlords submitted the following documents into evidence:

- A copy of a tenancy agreement signed by the parties on January 20, 2015 for a 1 year fixed term tenancy beginning on February 1, 2015 that converted to a month to month tenancy on February 1, 2016 for a monthly rent of \$1,800.00 due on the 1<sup>st</sup> of each month with a security deposit of \$900.00 paid;
- A copy of a Mutual Agreement to End Tenancy signed by the parties on June 21, 2016 agreeing to end the tenancy on June 26, 2016. This agreement included the following terms: the tenant would pay all outstanding strata charges; the landlord would reimburse the tenant \$250.00 of rent. Additional notations on the Mutual Agreement to End Tenancy include a statement that the move out inspection was completed on July 1, 2016; the landlord holds a deposit of \$950.00 to be refunded; the landlord will take care of cleaning and carpet cleaning; the tenant will pay strata fines but the landlord will pay move out fee. These additional notations are signed by both parties. The landlord explained in the hearing this was the move out Condition Inspection Report which included several photographs taken at the end of the tenancy; and
- A copy of a document entitled "Inspection Detail Report" dated January 29, 2015 which includes comments on two items ("entry closet door knob is loose and the door is not adjusted" and "patio need to be clean, there are garbages behind and in between green pots"). This documents also states that the entry door locks/knobs and bathroom #1 lights/ceiling fans need repair. The document also includes 36 photos and reports that the condition of the floor in the living room is good but has minor scratch; and

The landlord submits that the tenant has caused damage to the walls that required repair and painting and to the hardwood floors that required replacement. The landlord submits that they hired a contractor to complete the work for a cost of \$3,750.00. The landlord did not submit a copy of a receipt or invoice for the work.

The landlord did provide a copy of an invoice dated January 14, 2015 confirming that the rental unit had been painted and the hardwood floor had been touched up prior to the start of the tenancy. I note that the invoice also had a notation that reads: "Note:

Hardwood Floors needs to be Sand and Re-finish, since there are so many dent is on surface" [reproduced as written].

The landlord also seeks compensation in the amount of \$200.00 for the outstanding strata fines. The tenant confirmed the landlord is owed this amount from him.

The tenant testified that he has not provided the landlord with his forwarding address since he moved out of the rental unit. The landlord submitted that they received the tenant's forwarding address by text message in late August 2016. However, the landlord did not provide a copy of the text message as evidence and despite providing the landlord with an opportunity to find the text message in his phone during the hearing to be able to provide the date that he received it; he was not able to retrieve the text message.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In regard to the landlords' claim for \$200.00 for strata fines, I find that since the tenant agrees the landlord is owed this amount I grant the landlord an award of \$200.00.

Section 23 of the *Act* requires that the landlord and tenant must complete an inspection of the condition of the rental unit on the day the tenant is entitled to possession of the unit or on another mutually agreed upon day.

Section 23(4) requires the landlord to complete a Condition Inspection Report with both the landlord and tenant signing the report. Section 20 of the Residential Tenancy Regulation provides the requirements for the content of a Condition Inspection Report, including the requirement for the tenant's signature. Pursuant to Section 18 of the Regulation the landlord must provide a copy of the Report to the tenant within 7 days after the inspection has been completed.

Section 24 of the *Act* states that the right of the landlord to claim against a security deposit for damage to the residential property is extinguished if the landlord does not comply with the requirement to offer the tenant 2 opportunities to attend the inspection; if the landlord has provided 2 opportunities the landlord does not participate in the inspection; or complete the condition inspection report and give the tenant a copy as required under the Regulation.

Based on the landlord's explanation of the document entitled "Inspection Detail Report" I find the landlord relies upon this document as their Condition Inspection Report. However, I note that it does not comply with the requirements set forth in Section 20 of the Regulation, among other deficiencies, there is no signature from the tenant agreeing that the report records the condition of the rental unit at the start of the tenancy.

As a result, I find that the landlord has failed to comply with the requirements of Section 20 of the Regulation to complete a Condition Inspection Report as required by Section 23 of the *Act*. Therefore, pursuant to Section 24 of the *Act*, I find the landlord has extinguished their right to claim against the deposit for damage to the rental unit.

However, the fact that the landlord has submitted evidence that is not a Condition Inspection Report does not prevent them from making a claim to compensated for damages or losses they have suffered as a result of physical damage to the rental unit.

I also note that Section 20 of the Regulation requires that the Condition Inspection Report at the end of the tenancy must also include the tenant's signature agreeing or disagreeing to the condition as recorded at the end of the tenancy and a statement outlining the damage to the rental unit for which the landlord believes the tenant is responsible. In consideration of what the landlord has submitted as the Condition Inspection Report from the end of the tenancy, I find the landlord has failed to complete a Condition Inspection Report recording the condition of the rental unit at the end of the tenancy.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Upon consideration of the landlords' photographic and other documentary evidence I find the most compelling evidence is the invoice dated January 14, 2015 that suggests to the landlord, even before this tenancy began, that the hardwood floors required

refinishing due to the number of dents on the surface, despite the landlord's notation on the "Inspection Detail Report" that says the flooring was in good condition.

I am not persuaded that the landlord's photographs from the end of the tenancy record any additional damage to the floors that would require them to be replaced versus being sanded and re-finished as recommended prior to the start of the tenancy. I am also not satisfied the landlord's photographic evidence shows any evidence of damage beyond reasonable wear and tear in regards to the walls or painting.

Based on the above, I find the landlord has failed to establish that the tenant has caused damage to the hardwood floors or to the walls that contrary to his obligations under Section 37 of the *Act*. As a result, I dismiss this portion of the landlord's claim.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives a forwarding address in writing from the tenant, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits.

Section 39 of the *Act* stipulates that despite any other provision of the *Act*, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy the landlord may keep the security deposit in full.

In circumstances such as these, where the landlord's right to claim against the security deposit has been extinguished, pursuant to Section 24 of the *Act*, the landlord does not have the right to file an Application for Dispute Resolution claiming against the deposit for damage to the rental unit and the only option remaining open to the landlord is to return the security deposit and/or pet damage deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing.

However, in the case before me the tenant submits that he never did provide the landlords with his forwarding address. Despite the landlord's testimony that the tenant had provided his forwarding address I find the landlord has failed to provide any evidence that would contradict the tenant's position. As such, I find that as of the date of this hearing the tenant has not provided his forwarding address to the landlords.

As I have found that the tenant has not provided his forwarding address, I find that the landlord is not required to, as of the date of the hearing, return any portion of the security deposit. I make this finding because the landlord's obligation to return the

deposit within 15 days is predicated on the tenant's obligation to provide the landlord with a forwarding address in writing.

As such, until the tenant provides the landlords with his forwarding address in writing (not by text message or email) the landlords are not obligated to return any portion of the deposit. I caution the tenant that, pursuant to Section 39 of the *Act*, if he fails to provide the landlord with his forwarding address within 1 year of the end of the tenancy then he is not entitled to return of any portion of the deposit.

However, if the tenant does provide the landlords with his forwarding address in writing before the end of that 1 year period, the landlord must return the full amount of the deposit to the tenant within 15 days of receipt of the address.

### Conclusion

Based on the above, I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$225.00** comprised of \$200.00 strata fines owed and \$25.00 of the \$100.00 filing fee paid by the landlord for this application, as they were only partially successful in their claim.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 31, 2017

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Residential Tenancy Branch