



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

### Dispute Codes

For the landlord – MND, MNDC,

For the tenants – MNDC, OLC, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for damage to the unit, site or property and for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement. The tenants applied for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

At the outset of the hearing the landlord's agent testified that they withdraw their application in its entirety as the matter was decided at a previous hearing and this file must have been filed in error and was not served upon the tenant. [Previous file numbers documented on first page of this decision]. The landlord's application has therefore been withdrawn. The tenants withdraw their application for an Order for the landlord to comply with the *Act* as there is no longer a tenancy between the parties.

The parties attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have

reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this month to month tenancy started on June 01, 2015. Rent for this unit was \$2,300.00 per month due on the 1<sup>st</sup> of each month.

The tenants testified that there had been some issues during their tenancy between the landlord and tenants and a previous hearing was held on December 01, 2016. The relationship had become toxic. The landlord served the tenants with a Two Month Notice to End Tenancy on October 27, 2016 which had an effective date of December 31, 2016. The reason given on the Notice was that the landlord has all necessary permits or approvals required by law to demolish the rental unit or renovate or repair the rental unit in a manner that requires the unit to be vacant.

The tenants testified that they did ask to see the permits or approvals but were told they were not entitled to do so. The tenants were informed that the landlord wanted to do extensive renovations that included refinishing the flooring. The tenants were undecided about disputing the Notice but as they wanted to end the relationship with the landlord they decided to vacate the rental unit instead. The tenants gave the landlord Notice to End Tenancy on October 30, 2016 and vacated the rental unit on November 30, 2016. The tenants agreed they did receive November's rent free in compensation for the notice.

The tenants testified that due to their uneasiness about the landlord's reasons for ending their tenancy they kept a close watch on the adverts posted for rental units. The tenants believed the landlord had evicted them just to get them out of the unit and raise the rent.

The tenants referred to the landlord's documentary evidence and testified that the documentation provided for the flooring work is only a quote and not an invoice and the landlord has hand written on the quote the dates the work was done and that an amount was paid. This is not evidence that work was done in the rental unit. Any contractor would go to the site assess the work and provide a quote and then provide an invoice after the work was completed. The quote is dated March 05, 2017 yet the work was allegedly done in December, 2016.

The tenants referred to the landlord's photographic evidence showing pictures of the flooring allegedly taken before and after the work was completed. The tenants testified that in some of the photographs it does not appear to show that any work was done to the flooring and when you compare the before and after pictures you can see the shine on the floor and areas where it is greyed out. This discoloration would have been removed if the flooring had been sanded. The after photographs appear to show the same discolouration in the flooring. This evidence is shown on photographs 41 and 78, 40 and 82, 82 and 86 and photo 81. The tenants testified that furthermore the landlord has not provided any photographs showing the work being completed.

The tenants testified that the landlord claims the basement floor was painted. This was only a concrete floor with a few scratches which did not require renovations. If the landlord had wanted to do the work upstairs the tenants could have happily moved their belongings into the basement area and the level of work planned by the landlord did not require vacant possession.

Due to the above the tenants seek to recover compensation equal to two months' rent as the landlord did not do renovations to the unit that required vacant possession.

The tenants seek further compensation for lost company wages. The tenants testified that they had put two weeks aside from their company to do the work on the flooring as agreed at the start of the tenancy. At the end of the tenancy the landlord put a hold on this work and would not allow the tenants to complete it. The tenants therefore lost earnings of \$14, 280.00 for the period between November 15 and 30, 2016.

The tenants seek to recover moving costs of \$700.82. The tenants seek a further \$616.00 for the rental of a pup trailer and \$615.00 for the rental of a dump trailer which are costs associated with moving. The tenants seek \$180.00 for mileage costs for the truck for moving.

The tenants testified that they had to sell a car cheaper than its value as they were pressured into moving and required the funds from the sale of this car. The tenants seek to recover the loss of equity on that car of \$7,214.48.

The tenants acknowledged that their claim is over the maximum allowed and therefore they limit their claim to \$25,000.00.

The landlord disputed the tenants' claim. The landlord's agent provided testimony on behalf of the landlord and referred to the landlord's photographic evidence in pictures 41, 47, 49, and 70. The landlord's agent testified that these pictures show scratches in the dark hardwood flooring in the master bedroom when the tenants vacated and the finished flooring in the master bedroom after the work was completed. Other pictures show scratches and wear and tear on the flooring and the dull finish of the flooring after it was sanded and before they were finished. The floors were re-finished in the same colour so there is no dramatic colour change in the photographs provided after the work was done. Photograph 69 shows the tiled floor and front mat covered in dust from the sanding and in one picture a garbage can is clearly shown on the dull sanded floor.

The landlord's agent testified that the tenants stated that the basement flooring did not need to be refinished. This flooring had separation cracks which had to be filled and the

floor was then painted. The other work completed was a heat pump replacement; which did not require the unit to be vacant, but did take several attempts due to the cold weather.

The landlord's agent testified that when there is a vacant property that can still be shown to potential tenant then an advert is placed prior to the unit being ready. The unit was re-rented several months later. The landlord's agent agreed the unit was re-rented for a higher rent but that the rent was based on market value at the time.

The landlord's agent testified that the quote was provided for the work and was also an invoice. The landlord wrote on the quote to show the days the work took and that she had paid the invoice.

The landlord's agent testified that due to the toxic relationship between the tenants and landlord it was not an option to work with the tenants and allow them to store their belongings in the basement while the flooring work was completed. The landlord did not want to take responsibility for the tenants' belongings while the flooring work was taking place due to the excessive amount of dust generated and the amount of people coming in and out of the unit.

### Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

The tenants seek compensation in accordance to s. 51(2) of the *Act* on the grounds that the landlord did not do the renovation work in the rental unit that required the rental unit to be vacant.

I refer the parties to s. 51(2) of the *Act* which states:

**51 (2)** *In addition to the amount payable under subsection (1), if*

*(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or  
(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,*

*the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.*

I will not consider whether or not the landlord acted in good faith when she issued the Notice or that the reason on the Notice was justified for the level of work carried out in the unit as the tenants had the opportunity to file an application to dispute the Notice if they felt at the time it was served upon them that the landlord was not going to do renovations in the unit.

Consequently, I will consider the tenants' claim that the floors were not refinished by the landlord or that the work completed required the unit to be vacant. It is important to note here that not all renovation work requires a permit or approvals and if none are required by law then the landlord may still undertake renovation work and serve Notice to end a tenancy.

I am satisfied from the documentary evidence before me that the landlord did indeed sand the floors on the upper level of the unit and refinished those floors. I also find the landlord filled the cracks and refinished the concrete flooring in the basement. I am not persuaded by the tenants' arguments that the floors were not sanded as there are a number of the landlord's photographic evidence which do show that the floors are bare after they have been sanded. These photographs standing alone are sufficient for me to make this decision.

I find the level of work completed would not require a permit from the City and would have created a quantity of mess and dust. Due to the hostile relationship described by both parties it would not have been a satisfactory arrangement for the tenants to simply store their belongings in the basement while this work was carried out upstairs. In any event I am satisfied that the basement floor was also refinished.

I therefore find the reason provided on the Notice that renovations needed to be carried out that required the rental unit to be vacant were justified. The tenants argued that the landlord advertised the unit for rent shortly after the tenants vacated. The landlord is permitted to do this once renovations are completed as there was no indication on the notice that the landlord wanted to take possession of the rental unit. Therefore it is my decision that the tenants' application to recover compensation equal to two months' rent because this work was not completed has no merit and is dismissed.

With regard to the remainder of the tenants' application; the tenants seek a number of costs associated with moving from the rental unit. There is no provision for any extra compensation to be awarded to tenants when the landlord has evicted them with a Two Month Notice. The tenants received compensation equal to one month's rent due to this Notice and this compensation is provided to help a tenant with any moving costs. Consequently, this section of the tenants' application is dismissed.

With regard to the tenants' application for lost wages for time taken from their company to finish the floors; the tenants and landlord had an agreement at the start of the tenancy that the floors would be refinished by the tenants. At the end of the tenancy the work had not been completed and due to the adversarial nature of the relationship between the parties, the landlord did not want the work done by the tenants. The previous Arbitrator found that the tenants had violated this term of their tenancy agreement and a Monetary Order for the labour costs for the work was awarded to the landlord. As this matter was dealt with at a hearing held on December 01, 2016 I am not prepared now to find that the tenants should have been allowed to do the work after the tenancy ended on November 15, 2016 and therefore they are not entitled to any

reimbursement for any lost earnings for the two weeks they set aside to do this work. This section of the tenants' application is therefore dismissed.

With regard to the tenants' application to recover costs associated with selling their car and any loss of equity for that car; if the tenants choose not to dispute the Two Month Notice and needed funds to find alternative accommodation or to vacate the rental unit, then if the tenants sold their car to fund these costs at a cheaper value than the car was worth, the tenants cannot hold the landlord responsible for any loss they incurred. This section of the tenants' application is therefore dismissed.

As the tenants' application has no merit the tenants must bear the cost of their filing fee.

### Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord's application was withdrawn at the start of the hearing.

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 05, 2017

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Residential Tenancy Branch