



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MNDC FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on July 23, 2018. The Tenants applied for multiple remedies, as follows, pursuant to the *Residential Tenancy Act* (the *Act*):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67; and,
- recovery of the filing fee.

Both sides were present at the hearing. All parties provided testimony and were given a full opportunity to be heard, to present evidence and to make submissions. The Landlords acknowledged getting the Tenants' application package by registered mail sometime last November 2017. The Tenants stated that they served their amendment and evidence in early July 2018, and the Landlords acknowledge getting this package on July 5, 2018. The Tenants acknowledged getting the Landlords' evidence on July 9, 2018.

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.

### Issues to be Decided

- Are the Tenants entitled to compensation for money owed or damage or loss under the *Act*?

### Background and Evidence

The Tenants still reside in the rental unit and are seeking monetary compensation for several items as a result of having to deal with some renovations that took place in the rental unit.

The Tenants are seeking the following:

1. **Mike's Carpet and Flooring** - \$1,313.49 – packing, moving, and cancellation fee – The Tenants stated they engaged this flooring company and had to back out and cancel after they realized the Landlord did not want this company doing the work. The invoice for this expense was provided.
2. **Multiservices Vancouver** - \$405.00 – The Tenants stated they hired a cleaning company to clean up some of the renovation dust after everything was completed. The invoice for this amount was provided.
3. **Aggravated Damages** - \$1,000.00 – The Tenants stated that they are looking for compensation for all of the delay and hassles caused by the renovations.
4. **Hotel and restaurant food expenses** - \$2,651.08 – The Tenants stated that they had to leave the rental unit for short periods of time in December 2015, and February 2016, so that some of the work could be done. They provided a list of these charges and expenses.
5. **Total: \$5,639.08**

The Tenants stated that on November 16, 2015, they approached the Landlords and asked them if they would perform some upgrades to the rental unit. The Tenants stated that they were under the understanding that they had permission to engage tradespeople to perform some of the work they discussed on November 16, 2015. The Tenants stated that the Landlord attended the rental unit on November 29, 2015, to look at the work that needed to be done. The Tenants had discussed several things that they wanted to be upgraded. Most notably, the Tenants wanted a new hardwood floor. The Tenants stated that they were under the understanding that they would “source” someone to do the flooring.

The Tenants stated that they approached the Landlord because the rental unit is a bit older and some things were dated and worn. The Tenants stated that they engaged and hired a flooring company to move their belongings out of the rental unit on November 30, 2015, and to start doing some of the flooring work that they had discussed with the Landlords (Item #1 above). The Tenants also acknowledged that they never got written permission from the Landlord to hire or perform any work. The Tenants stated that it was their understanding that they would be moving forward with the renovations on behalf of the Landlord based on some general conversations.

The Landlords stated that they were visited by the Tenants on November 16, 2015, and the Tenants asked them to do some upgrades to the rental unit and to freshen up the space. The

Landlords stated that they discussed a few different items, including the flooring and they agreed to come and see the rental unit but did not agree to anything further at that time. The Landlords stated that they attended the rental unit on November 30, 2015, so that they could see what needed to be done, and determine what work would be completed. The Landlords stated that they were surprised to see that the Tenants had already moved their furniture out of the rental unit when they came on November 30, 2015, because they had yet to give their consent or approval to start any work.

The Landlord stated that they never have and never would give the Tenants the authority to start renovations or enter into contracts with regard to the rental unit. The Landlord stated they made it clear to the Tenants that they would come by and visit to see what could be done. The Landlord stated that on November 16, 2015, when the Tenants came over to talk about work they wanted done, they only talked generally, and no commitments were made.

The Landlords stated that they required permits from the strata council before flooring renovations can start. The Landlords stated that they received some quotes and offered the Tenants, by email, the opportunity to have a list of updates completed.. The Landlords provided a copy of this email, sent December 10, 2015, which highlights what they would pay for, as follows:

Before we sign the contract , we wanted to clarify what we are prepared to pay for which is :-

- 1 ) New laminate flooring & new baseboard installation ( plus transition ) in the present hard-wood floor areas .
- 2 ) Painting , filling & caulking walls , doors , baseboards ( painting inside of main entrance closet only partially painted to fit in with new wall colour)
- 3 ) cleaning of tile grout in bathroom
- 4 ) Clean kitchen floor tiling and pay for disconnection & reconnection of gas stove IF tiling cleaning company requires this .
- 5 ) repair entrance closet " slide "
- 6 ) service patio door " sliding mechanism "

We would expect that you would be responsible for furniture removal to allow for floor installation , painting , kitchen floor tile cleaning etc

If you are happy with this arrangement , we will go ahead and sign the laminate floor contract with Homedepot and then start looking at timelines convenient to you and us to have this work started .

The Landlords' pointed out that within a matter of hours, the Tenants responded via email and stated the following:

Yes, please move ahead. Let us know the dates so that we can make appropriate plans.

The Landlords stated that the only reason they ever contemplated and performed these improvements was because the Tenants approached them and asked for some newer finishings. The Landlords stated that they, in good faith, had the work done to make the Tenants happy and were clear up front about what they would pay for. The Landlords stated that none of the work was critical and was all optional. They believed they were being good Landlords by having the place updated at the Tenants request.

The Landlords stated that they did not commence any work until they had confirmed with the Tenants, via the email on December 10, 2015, that they all agreed on what was to be done, and who would pay for it. The Landlords stated that they were clear on what they would pay for, and the Tenants agreed to it. The Landlords stated that the list of things they agreed to pay for never included any food, accommodation, or post renovation cleaning costs.

The Tenants stated that they also hired a cleaning company to come and clean up the dust after all the renovations were done, and this cost \$405.00 (item #2 above). The Landlords stated that they visited the apartment after the renovations, and they saw a reasonable amount of dust and debris that would be expected following a flooring renovation. They used a damp cloth to remove dust from a section to demonstrate that it could be easily cleaned. The Landlords stated that they never agreed to pay for cleaning costs, and said that the Tenants could have reasonably cleaned the surfaces..

With respect to item #3, the Tenants feel they are entitled to Aggravated Damages in the amount of \$1,000.00 for all of the delay and inconveniences caused by the renovations. The Tenants stated their enjoyment of the rental unit was compromised during the upgrades. The Landlords said that they feel this claim is ridiculous because they only started these upgrades because the Tenants asked for them, expressed a willingness to be accommodating to enable the renovation, and agreed up front to what was to be done and who was to pay for it.

With respect to item #4, the Tenants are looking for Hotel and restaurant food expenses totalling \$2,651.08 for the short periods of time they were staying away from the rental unit in order for the work to be completed.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. 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.

In this instance, the burden of proof is on the Tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlords. The Tenants must also provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

After reviewing the evidence and testimony on this matter, I find it important to note that there is no evidence to show that any of the repairs or upgrades to the rental unit were critical or essential to the continuation of the tenancy. It appears the Tenants approached the Landlords and engaged with them to have some upgrades done to improve their enjoyment of the unit. It also appears the Landlords were acting in good faith by coming to view the residence, and subsequently perform the improvements as requested by the Tenants.

I find there is no evidence that the Tenants had any authority to hire or contract the flooring company to start the work. The Tenants were under the assumption they were allowed to contract this out. However, they also acknowledged they never got anything formally in writing to show they had the authority to move forward with the flooring company. Given the Tenants engaged this service prior to getting approval from the Landlord, I find they are responsible for these costs (cancellation, pre-emptive moving costs etc). Ultimately, I find the Tenants pre-emptively hired the flooring company and should not be entitled to recovery of item #1 Mike's Carpet and Flooring - \$1,313.49.

With respect to item #2, I find it important to note that the Tenants were the ones who initiated the work being done, as they wanted some of the finishings to be upgraded. The Tenants agreed up front, as per the email quoted above, what the Landlord would pay for. There is insufficient evidence to show that there was an exceptional amount of cleaning such that the Tenants should be compensated for this amount. I also find it important to note that the Tenants agreed to go forward with the renovation, with a clear understanding of what the Landlord would pay for, which did not include cleaning services. I decline to award the Tenants recovery of this item.

With respect to item #3, I decline to award the Tenants with aggravated damages for similar reasons. I find the Tenants initiated the renovations, agreed to what would be paid for and done by the Landlord. I find the Tenants ought to expect that some disruptions would occur. I find the Tenants have provided insufficient evidence that they should be entitled to aggravated damages. I acknowledge that some of the renovations took longer than the tenant expected, however, they were completed in good faith by the Landlords, and at the Tenants request. I also note the Landlords had to consult with strata and had some contractors cancel, which contributed to the delay. I find there is insufficient evidence that the circumstances surrounding the renovations were such that the Tenants should be compensated for aggravated damages.

With respect to item #4, I decline to award the Tenants with the costs they incurred at hotels and restaurants for similar reasons. I find it important to note that the Tenants were the ones

who initiated the work being done, as they wanted some of the finishings to be upgraded. The Tenants agreed up front, as per the email quoted above, what the Landlord would pay for. This list did not include hotel expenses or the costs of eating out at restaurants while the renovations were happening. As stated above, I find the renovations were completed in good faith, and at the Tenants request. I decline to award the Tenants with any compensation for this item.

As the Tenants were unsuccessful with their application, I decline to award the recovery of the filing fee.

#### Conclusion

The Tenants' application is dismissed, in full, without leave to reapply.

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: July 23, 2018

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Residential Tenancy Branch