



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ARDENT PROPERTIES INC.  
and [tenant name suppressed to protect privacy]

## DECISION

### Dispute Codes

FFL MNDCL-S MNDL-S MNRL-S

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$34,113.75 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:40 pm in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. The landlord's rental manager ("**KG**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that KG and I were the only ones who had called into this teleconference.

KG testified that the tenant was served the notice of dispute resolution form and supporting evidence package via registered mail on July 15, 2019, and with additional evidence on September 10, 2019. KG provided a Canada Post tracking numbers confirming this mailing which is reproduced on the cover of this decision. I find that the tenant is deemed served with each of these packages, five days after KG mailed them, in accordance with sections 88, 89, and 90 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$34,113.75 as compensation for unpaid rent, damage to the rental unit, and associated cleaning costs for the rental unit;
- 2) recover its filing fee; and
- 3) apply the security deposit against any monetary award made?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of KG, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below.

The tenant and the owner of the property entered into a tenancy agreement in March 2018 whereby the tenant rented the entire residential property (a large single-detached house) from the owner for monthly rent of \$3,700 plus 100% of BC Hydro charges (the "**Prior Tenancy Agreement**"). He paid the owner a security deposit of \$1,850.

No move-in inspection report was completed at the start of this tenancy. KG testified that the residential property was brand new at the start of the tenancy, and the owner did not believe that he needed to conduct one as a result. The landlord provided a copy of a Home Warranty Completion Certificate which shows the residential property was completed and ready for occupation on March 15, 2018. KG testified that all elements of the residential property were brand new at the start of the Prior Tenancy.

In March 2019, the owner hired a property management company (which is named as the landlord in this application) to manager the property. At this time the tenant expressed an interest to rent only a portion of the residential property (the upper floor and a portion of the lower floor).

The tenant and the property management company (as agent for the owner) entered into a written, month-to-month tenancy agreement starting April 1, 2019 to rent the upper floor and a portion of the lower floor of the residential property (the rental unit). Monthly rent is \$2,500 plus 65% of BC Hydro charges and is payable on the first of each month (the "**Tenancy Agreement**"). The landlord retained \$1,250 of the previously-paid security deposit. It returned the balance (\$600) to the tenant at the start of the current tenancy. The landlord still retains this deposit.

The Tenancy Agreement includes a clause for an administration fee for insufficient funds (the “**NSF Fee**”) of \$42.50 per “dishonored payment”. It also included an addendum which included a clause:

## **7. REPAIRS**

1. Wash scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping. Damage from excessive nail holes, large nails, screws or tape that has been used will be the tenant responsible to pay for, including possible re-painting.

The landlord did not conduct a move-in inspection at the start of this tenancy either. The landlord did conduct a “Routine Inspection” on March 18, 2018. KG testified the tenant was present for this inspection and that she completed a “Routine Inspection” form (which was entered into evidence by the landlord), but that this form was not signed by the tenant and that she did not provide a copy of it to the tenant. KG testified that at this time she was not aware that the owner had not completed a move-in inspection report at the start of the prior tenancy.

KG testified that she attended the residential property on June 18, 2019 to show the un-rented portion of the residential property to a prospective renter. She testified upon her arrival, she saw that the tenant had removed all the furniture and abandoned the rental unit. She testified that the tenant had not notified her of his intention to end the tenancy. She characterized the tenant’s actions as “skipping out” on the Tenancy Agreement.

## Damages

The landlord claims damages as follows:

Description	Amount
Rent owing (June and July 2019)	\$5,000.00
NSF Fee	\$42.50
Unpaid BC Hydro	\$691.87
Removal of appliances	\$126.00
Cleaning and repairs	\$785.13
New knob for kitchen range	\$150.71
Repainting walls	\$1,260.00
Replacement of hardwood floors	\$26,057.54
	<b>\$34,113.75</b>

### 1. Rent

KG testified that the tenant did not pay rent for June 2019. The landlord claims for \$2,500 in satisfaction of these arrears.

KG argued that the landlord was entitled to one month's notice of the tenant's intention to end the tenancy. She argued that, had the tenant given such notice in June 2019, the soonest he would have been entitled to end the tenancy as of July 31, 2019. As such, she argues, the landlord would be entitled to monthly rent for July as well, in the amount of \$2,500.

## 2. NSF Fee

KG testified that the tenant incurred an NSF Fee relating to a rental arrears from January 2019 (under the Former Tenancy Agreement). The landlord claims \$42.50 in satisfaction of this amount.

## 3. Unpaid Hydro

KG testified that the tenant did not pay any portion of the BC Hydro bills for the period of March 6, 2019 to the date when he abandoned the rental unit. The landlord submitted into evidence two "Utilities Recovery Worksheets" which calculated how much the tenant owes in unpaid utilities, and accounts for the reduced percentage of the BC Hydro charges the tenant was to pay once the parties entered into the Tenancy Agreement. The landlord submitted into evidence BC Hydro Invoices which support these amounts claimed.

In brief, the landlord claims \$691.87 in unpaid utilities, calculated as follows:

Start Date	End Date	Amount of Bill	Amount owed per diem	Amount Owed			Total Owed
				March 6 to April 1 (100%)	April 1 to April 23 (65%)	April 23 to June 20 (65%)	
March 6, 2019	April 23, 2019	\$498.26	\$10.17	\$274.55	\$152.02	-	<b>\$426.57</b>
April 24, 2019	June 20, 2019	\$408.15	-	-	-	\$265.30	<b>\$265.30</b>
							<b>\$691.87</b>

## 4. Removal of Appliances

KG testified that the tenant left a small refrigerator and freezer on the back patio of the rental unit after abandoning it. She testified that the landlord hired a disposal company to remove and dispose of these items. The fee for this was \$126. The landlord submitted into evidence an invoice in support of this amount and a photo of the abandoned appliances.

#### 5. Cleaning and Repairs

KG testified that the tenant did not clean the rental unit prior to leaving it and that the following were not properly cleaned:

- kitchen sink;
- oven;
- refrigerator drawers; and
- master bathroom:
  - o cabinets;
  - o bathtub and shower stall;
  - o exhaust fan; and
  - o sink.

The landlord submitted into evidence photos which support the claim that these were not adequately cleaned.

KG testified that the landlord hired a cleaning company to clean the rental unit. She testified that the tenant removed all the smoke detectors and a knob from the kitchen range. She testified that the tenant damaged the bathroom fan switch and cabinet handle, a window curtain, and a bi-fold sliding door. The cleaning company repaired this damage and replaced the smoke detectors and range knob.

The cleaning company charged the landlord \$400 for cleaning, \$150 for the labour associated with the needed repairs stated above, and \$207.63 for purchase of supplies. The landlord provided an invoice supporting these figures (with a total of \$785.13 after tax) and receipts supporting the purchase of supplies (excluding the replacement range knob, which is discussed below).

#### 6. Range Knob

As stated above, KG testified the tenant removed a knob from the kitchen range. The landlord purchased a new knob. The landlord provided a photograph of this damage as well as receipt for the replacement knob in the amount of \$150.71.

#### 7. Painting Walls

KG testified that, prior to abandoning the rental unit, the tenant patched holes in the walls of the kitchen, living room, and two of the bedrooms. She testified that the tenant then painted over these patches, but that the difference in paint color between the paint the tenant used, and the original paint on the walls is noticeable. The landlord provided photos showing that repainted sections of the walls are clearly visible.

The landlord hired a painter to repaint the nine walls in which the tenant patched holes, across four rooms, to cover the tenant's painting, at a cost of \$1,260. The landlord provided an invoice supporting this amount.

#### 8. Hardwood Floors

KG testified the rental unit is "open concept" and all the flooring is of the same material throughout the upper floor. She testified that the flooring throughout the rental unit is Brazilian cherry engineered hardwood. She testified that the flooring in the rental unit living room is significantly damaged, with significant scratches, gouges, and patches missing. She testified that, due to its nature, the engineered hardwood cannot be sanded to remove the scratches or otherwise be repaired, and that the flooring must be replaced.

KG testified that the landlord cannot simply replace the flooring in the living room and leave the rest of the rental unit flooring untouched. She testified that the specific flooring material used is no longer available, and the closest alternatives differ in color. She testified that this would cause the flooring in the rental unit to be unsightly and would negatively affect the overall appearance of the rental unit.

KG testified that the landlord obtained a quote of \$26,057.54 for the removal of the current flooring and replacement with new flooring. The landlord entered a copy of this quote into evidence.

### **Analysis**

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Rule of Procedure 6.6 states:

#### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

As such, despite the tenant's non-attendance to this hearing, the landlord must prove that it is more likely than not that the tenant breached the Act or Tenancy Agreement, that it suffered corresponding damage, and that it acted reasonably to minimize this damage.

I will address each of the heads of damage in turn.

#### **1. Rent**

I find that the tenant was obligated to pay monthly rent of \$2,500 pursuant to the Tenancy Agreement. I find that the tenant abandoned the rental unit at some point in June 2019. I accept KG's uncontroverted testimony that the tenant did not pay June 2019's rent. I also accept KG's testimony that the tenant did not give the landlord notice of his intention to end the tenancy.

Policy Guideline 3 states:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.

As the Tenancy Agreement was on a month to month basis, I find that, pursuant to section 45(1) of the Act, had the tenant given notice to end the tenancy in June 2019, the soonest the tenancy could have ended would have been July 31, 2019. As such, the tenant would have been required to pay monthly rent for July 2019.

For the preceding reasons, I find that the tenant must pay the landlord \$5,000 representing payment for June and July 2019 rent.

## 2. NSF Fee

The basis for the landlord's claim for the NSF Fee is rooted in a "dishonored payment" made in January 2019. This payment was made pursuant to the Prior Tenancy Agreement. The landlord did not submit a copy of the Prior Tenancy Agreement into evidence. I do not know if it contained a clause requiring the tenant to pay an NSF Fee in the event of a "dishonored payment".

The existence of a clause in the current Tenancy Agreement is not a basis to make an award for damages under the Prior Tenancy Agreement. The terms of the current Tenancy Agreement do not retroactively apply to the past tenancy.

As such, I find that the landlord has failed to discharge its evidentiary burden to show that an NSF Fee would be applied in the event of a "dishonored payment" under the Prior Tenancy Agreement.

## 3. Unpaid Hydro

I accept KG's uncontroverted evidence that the tenant did not pay any portion of the BC Hydro bills since March 6, 2019. I find that the Tenancy Agreement requires that tenant pay 65% of the BC Hydro bills.

Similar to the NSF Fee, a portion of the unpaid BC Hydro bills relates to charges incurred under the Previous Tenancy Act. However, unlike with the NSF term, I am prepared to accept that a term requiring the tenant to pay the BC Hydro bill exists under the Previous Tenancy Agreement, even though I do not have a copy of that agreement to review. I find that it is reasonable to assume that (given the tenant pays 65% of the BC Hydro bill when rent the upper floor and part of the lower floor of the residential property), when the tenant rented 100% of the residential property, he was obligated to pay 100% of the BC Hydro bills. As such, I find that this was a term of the Prior Tenancy Agreement.

As such, I order that the tenant pay the landlord \$691.87, representing payment of his portion of unpaid BC Hydro bills from March 6, 2019 to July 4, 2019.

#### 4. Removal of Appliances

I accept KG's uncontroverted testimony that the tenant left a refrigerator and freezer at the rental property when they abandoned it, and that the landlord reasonably incurred a cost of \$126 to dispose of them.

Section 37(2) of the Act states:

#### **Leaving the rental unit at the end of a tenancy**

37(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,

I find that by leaving the refrigerator and freeze at the rental unit, the tenant did not leave the rental unit "reasonably clean".

I find that, pursuant to section 25(2)(a) of *Residential Tenancy Regulation*, BC Reg 477/2003 (the "**Regulations**"), it was reasonable for the landlord to have disposed of these items rather than storing them as contemplated by section 24 of the Regulations.

As such, I find that the tenant must pay the landlord \$126 in compensation for the cost incurred to remove the freezer and refrigerator.

5. Cleaning and Repairs / 6. Range Knob / 7. Painting

Under ordinary circumstances, the lack of a move in condition inspection report would make it difficult to determine the true state of the rental unit at the start of the tenancy, which, in turn, would make it difficult to determine what damage was caused by the tenant, and what predated the tenancy.

However, in this case the lack of the move-in condition inspection report does not pose such a problem. I accept KG's uncontroverted evidence (which is supported by the Home Warranty Completion Certificate) that the residential property was brand new, and in an unblemished state, when the Prior Tenancy Agreement was made. I find that since this time, the tenant had uninterrupted possession of the rental unit.

As such, in the absence of evidence to the contrary, I find that any damage to the rental unit is attribute to the actions of the tenant. Leaving the rental unit in such a condition is a breach of section 37(2) of the Act (set out above).

I find that the rental unit was damaged and not cleaned as set out above, and that the landlord reasonably incurred \$785.13 in cleaning and repairing the rental unit, and \$150.71 in purchasing the replacement knob for the range.

I find that the addendum to the Tenancy Agreement obligates the tenant to repair holes to the walls of the rental unit and repaint the walls as part of the repair. I find that, while tenant did repair the holes and repaint the walls, the repainting was insufficient. I find that the landlord reasonably incurred \$1,260 to repaint nine walls in four rooms of the rental unit.

As such, I order that the tenant pay the landlord \$2,195.84 in compensation for the above-described costs incurred by the landlord.

8. Hardwood Floors

For the reasons stated in the preceding section I find that, when the Prior Tenancy Agreement was entered into, the hardwood floors were undamaged and that, while a new tenancy agreement was entered into, the tenant had uninterrupted possession of the rental unit. I accept the uncontroverted evidence of KG (supported by photographic evidence), that the hardwood flooring in the living room of the rental unit was heavily

damaged. I find that this damage is beyond ordinary wear and tear. As such, I find that the tenant breached section 37(2) of the Act.

I accept KG's uncontroverted testimony that the hardwood floor cannot be repaired and must be replaced. I accept her testimony that if the hardwood flooring panels of the living room alone were replaced the overall look of the rental unit would be disturbed, as it would significantly detract from the "open concept" of the rental unit. As such, I find that it is reasonably necessary to replace all of the contiguous hardwood floor in the rental unit. I find that the cost to do this is \$26,057.54, as per the provided quote.

However, I find that the landlord is not entitled to recover the full amount of the replacement costs, as to replace the hardwood floors (which were a little over a year old at the time the tenant abandoned the rental unit) with new flooring would represent an upgrade to floors. As such, a reduction in compensation to account for the age of the flooring is appropriate.

Policy Guideline 40 states:

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Policy Guideline 40 sets the useful life of hardwood floors at 20 years. Given that the floor is roughly one year old, I find that a 5% reduction (\$1,302.88) to its replacement cost is appropriate. Accordingly, I find that the tenant must pay the landlord \$24,754.66 (\$26,057.54 - \$1,302.88) to replace the hardwood floor.

## 9. Security Deposit

As the landlord did not complete a move-in inspection report at the start of the tenancy, I find that, pursuant to section 24(2), the landlord's right to claim against the security deposit is extinguished. The effect of this extinguishment, as per section 38(5), is that the landlord and the tenant cannot enter into an agreement whereby the tenant grants the landlord permission to may retain the security deposit. This does not apply to the present case.

Notwithstanding this extinguishment, section 72(2) allows that the security deposit may be credited towards any monetary order awarded against a tenant.

Accordingly, I order that the landlord may retain the full security deposit in partial satisfaction of the monetary orders made above.

As the landlord has been substantially successful in this application, I order that it may recover its filing fee from the tenant.

### Conclusion

In summary, I order that the tenant pay the landlord \$31,618.37, representing the following:

Description	Amount
Rent owing (June and July 2019)	\$5,000.00
Unpaid BC Hydro	\$691.87
Removal of appliances	\$126.00
Cleaning and repairs	\$785.13
New knob for kitchen range	\$150.71
Repainting walls	\$1,260.00
Replacement of hardwood floors	\$24,754.66
Filing Fee	\$100.00
Security deposit credit	-\$1,250.00
	<b>\$31,618.37</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: October 29, 2019

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Residential Tenancy Branch