



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Pemberton Holmes Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MND, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlords attended the hearing and gave affirmed testimony. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents on April 23, 2013 by registered mail, the tenant did not attend. The landlord provided evidence that the tenant received the package on April 26, 2013, and I find that the tenant has been served in accordance with the *Residential Tenancy Act*. The line remained open while the phone system was monitored for 10 minutes prior to any testimony being heard, and the only participant who joined the conference call hearing was the landlord's agent. The landlords also provided evidentiary material prior to the commencement of the hearing, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenant for unpaid rent or utilities?
- Have the landlords established a monetary claim as against the tenant for damage to the unit, site or property?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlords' agent testified that this fixed term tenancy began on March 1, 2012 and ended on February 28, 2013 at which time the tenant moved out of the rental unit. Rent in the amount of \$1,598.00 per month was payable in advance on the 1<sup>st</sup> day of each month. The tenant paid the landlord a security deposit in the amount of \$799.00 as well as a pet damage deposit in the amount of \$500.00 in installments during the tenancy, although the tenancy agreement required a pet damage deposit of \$799.00; the difference was never collected by the landlord.

The landlord's agent further testified that the tenant was continually late paying rent in full and the landlord has provided a tenant ledger showing that a balance is continually owed but the balances include the deposits of \$799.00 and \$799.00. The final balance on March 4, 2013 is \$2,192.00.

A move-in condition inspection report was completed by the parties on February 25, 2012 and a move-out condition inspection report was completed on February 28, 2013. A copy has been provided for this hearing, which is a document showing move-in and move-out notations in the same document for ease of comparison. The document has been signed by a landlord and tenant, and contains a notation signed by the tenant agreeing "to apply any left over deposits to outstanding rents." The document also shows deductions of outstanding rent in the amount of \$3,741.00 and repairs for \$250.00, less \$500.00 which the landlord's agent testified was an incentive offered at the commencement of the tenancy for honouring the fixed term. Another notation states, "Deposits of \$1,299 on file leaves owing \$2,192." The landlord claims that amount as against the tenant for unpaid rent and damages.

### Analysis

Firstly, I have examined the tenant ledger and I find that the tenant was not in arrears of rent the sum of \$2,192.00 at the end of the tenancy. That amount included the unpaid portion of the pet damage deposit. Since the tenancy is ended, the tenant does not owe the landlord that deposit. A landlord cannot say, for example, "You haven't paid the deposit and you still owe \$299.00 but I'm only going to give you credit and reduce my claim by the amount you actually paid." That, in effect would give the landlord an extra \$299.00 that the landlord would not be entitled to. When a landlord combines deposits and rent in a single ledger, the landlord runs the risk of over-claiming. I have separated the deposits from the rent using the tenant ledger provided by the landlord as follows:

DATE	DESC	RENTS				DEPOSITS		
		DEBIT	CREDIT	BAL OWING		DEBIT	CREDIT	BAL EXPECTED
06-Feb	Sec Dep Due & Partial Pmt					799	500	299
06-Feb	Pet Dep Due					799		1098
13-Feb	Payment of Sec Dep						200	898
01-Mar	Rent due & Payments made	1598	1598	0			99	799
01 Apr & 02 Apr	Rent due & Payments made	1598	1597	1				799
01-May	Rent due & Payments made	1598	1599	0				799
01-Jun	Rent due & Payments made	1598	1598	0				799
01-Jul	Rent due & Payments made	1598	1598	0				799
01-Aug	Rent due & Payments made	1598	1598	0				799
13 Aug & 20 Aug	Pet Dep Payment						200	599
01-Sep	Rent due & Payments made	1598	1598	0				599
21-Sep	Pet Dep Payment						100	499
01-Oct	Rent due & Payments made	1598	1598	0				499
22-Oct	Pet Dep Payment						100	399
01-Nov	Rent due & Payments made	1598	1598	0				399
05-Nov	NSF/FEES (\$25)	1623		1623				399
20-Nov	Pet Dep Payment						100	299
21-Nov	Rent Payment		500	1123				299
01 Dec & 04 Dec	Rent due & Payments made	1598	1200	1521				299
01-Jan	Rent Due	1598		3119				299
09-Jan	Rent Paid		400	2719				299
10-Jan	Rent Paid		800	1919				299
21-Jan	Pet Dep Payment			1919			100	199
24-Jan	NSF/FEES (\$25)			1919		25	-100	324
01-Feb	Rent Due	1598		3517				324
26-Feb	Rent Paid		100	3417				324
	<b>Totals</b>	<b>20799</b>	<b>17882</b>			<b>1973</b>	<b>1299</b>	
<b>28-Feb</b>	<b>SUMMARY</b>							
	Rent outstanding	3417		3417				
	Less Incentive Credit		500	2917				
	Repairs & Cleaning Agreed	250		3167				
	LESS SEC DEP/PET DEP PAID		1299	1868				

I accept the testimony and evidence of the landlord's agent that the tenant agreed to \$250.00 in damages and agreed in writing that the landlord apply the pet damage deposit and security deposit to the outstanding rent, which exceeds the amount of the deposits paid. In the circumstances, I find that the landlord is entitled to keep the

security deposit and pet damage deposit of \$1,299.00 and the landlord is entitled to a monetary order in the amount of \$1,868.00. Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of filing.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the security deposit and the pet damage deposit and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,918.00.

This order is final and binding on the parties and may be enforced.

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 18, 2013

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Residential Tenancy Branch