



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** MND, MNR, MNDC, FF

### **Introduction**

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for cleaning, disposal, repairs and 2 months loss of rent.

The landlord was present. Despite each co-tenant being served by registered mail signed for by each party on October 11, 2013, as confirmed by Canada Post tracking printouts, neither tenant appeared.

### **Issue(s) to be Decided**

Is the landlord entitled to monetary compensation under section 67 of the *Act* for damages?

### **Background**

The landlord testified that the tenancy began in August 2007 and ended with an Order of Possession issued in June 2013. The landlord had already obtained a monetary order for rent owed and the security deposit was credited towards that debt.

A copy of the tenancy agreement, copies of the move-in and move-out condition inspection reports, copies of communications, invoices, photos and proof of service were submitted into evidence.

The landlord testified that the tenant participated in the move-in condition inspection, but did not attend the move out condition inspection. The landlord testified that the tenant did not leave the rental unit reasonably clean as required under the *Act*, ruined the carpets and drapes, left items in the unit and the repairs took two months to complete.

The landlord is making the following claims:

- \$2,217.19 for removal & disposal of carpeting and personal property and repairs,
- \$1,127.49 pro-rated cost of new carpets,
- \$844.04 for four sets of drapes,

- \$61.60 for a missing blind at front door,
- \$1,650 loss of rent for July and August, while repairs were in process, and
- \$100.00 cost of filing the application.

The total amount being claimed is \$8,362.94

**Analysis:**

**Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof was on the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

In regard to the cleaning and repairs, I find that under section 37(2) of the Act, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

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- \$100.00 cost of filing the application.

With respect to compensation requested for damages and losses, I find that the landlord's undisputed claims for cleaning and disposal of personal items should be granted. I find that the invoice provided by a general contractor, charging \$32.00 per hour for the labour amalgamated some of the cleaning and repair tasks.

I find that the disposal costs shown on the invoice as \$256.00 included removal of the carpeting as well as the tenant's personal items. I therefore grant disposal costs of \$128.00 to the landlord for removing the tenant's items.

In regard to the cost of cleaning, I find that the contractor charged \$384.00 for 12 hours to “wash down the unit”, \$288.00 for 9 hours to clean kitchen, stove, fridge and bathroom and \$96.00 for 3 hours to clean window tracks and glass.

I find it is not clear whether the contractor’s work in “washing down” the unit pertained to the preparation of painting or some other cleaning tasks. However, I accept that the contractor did spend 9 hours on the kitchen and bathroom and 3 hours cleaning the windows and tracks. I grant the landlord \$384.00 for cleaning costs.

In regard to the other repairs shown on the invoice, including repairing walls and ceilings, repair bi-fold doors, replacing bent curtains, install towel bars, replace framing around window, replacing fixtures in bath kitchen, dining and stairs and replacing broken light switches, I find that it is not possible to determine what issues were subject to wear and tear, for which a tenant is not responsible. In regard to a rental unit where smoking is permitted, I find that normal wear would encompass residue from tobacco, likely from more than one occupant, if there are multiple bedrooms. I find that the landlord has not sufficiently proven that the claims for repairs meet all elements of the test for damages. For this reason I find that the repair claims must be dismissed.

In regard to the cost of the replacement carpets, I accept the landlord’s testimony that the carpets could not be cleaned based on the photos. I find that the landlord is entitled to 41% of the \$1,911.00 cost of carpeting and grant the landlord \$783.51 based on the age of the carpets.

In regard to the claim for the drapes, the landlord’s summary mentions 4 sets of draperies. I find that there are two different invoices issued on different dates for a total of 8 sets of drapes. On the move-in and move-out condition inspection reports it indicates damage to window coverings in 3 different rooms including the kitchen, dining room and bedrooms. However, there is no breakdown with respect to how many windows are in each of the rooms. The landlord gave verbal testimony that that the living room actually features 3 sets of drapes and there are other areas with multiple windows. I am prepared to accept that the landlord has sufficiently proven that they required replacement of four sets of window coverings at a cost of \$422.02. I find that the 41% pro-rated value, based on a ten-year average useful life, pursuant to section 40 of the Residential Tenancy Policy Guidelines, would be \$173.03 and I grant this amount of compensation to the landlord.

Although the move-in and move-out condition inspection reports do not show the existence of the front-door blind, I accept that this blind existed and was not left intact by the tenant. Accordingly I find that the landlord is entitled to 41% of the \$61.60 replacement cost totaling \$25.26.

In regard to the claim for two months loss of rent, for July and August 2013, I find that the tenancy ended sometime after June 5, 2013. I find that the landlord has already been granted a Monetary Order for the full rent for month of June 2013 in a previous hearing and that the unit was vacant for a portion of June. I find that the landlord's invoices are dated from July 29, 2013, to August 30, 2013 and there is no way to confirm that any of the repair work was commenced in June immediately after the tenant left, nor prior to July 29, 2013. I find that there is insufficient evidence to confirm that the landlord met section 7(2) of the Act by reasonably mitigating their losses. Therefore the landlord's claim for a loss of 2 months of rent fails to satisfy element 4 of the test for damages.

Accordingly, I find that the portion of the landlord's application seeking \$1,650.00 compensation for loss of rent must be dismissed.

I find that the landlord is entitled to total compensation of \$1,593.80, comprised of \$128.00 to remove the tenant's abandoned items and garbage, \$384.00 for cleaning costs, \$783.51 prorated cost of carpeting, \$173.03 prorated cost of the drapes, \$25.26 for the replaced blinds and \$100.00 for the cost of the application.

I hereby issue a monetary order for \$1,593.80.

This order must be served on the tenant in accordance with the Act and if necessary can be enforced through Small Claims Court.

The landlord's other monetary claims are dismissed without leave.

### **Conclusion**

The landlord is partly successful in the application and is granted a monetary order for rental arrears and cleaning.

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: December 04, 2013

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Residential Tenancy Branch

