



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

regarding PEMBERTON HOLMES PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR MNDC FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlord applied for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

Two agents for the landlord (the "agents") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. The agents testified that the tenants were served the Notice of Hearing and evidence packages by registered mail on September 18, 2013. The agents provided a registered mail receipt with tracking numbers as evidence and confirmed that the name and address matched the name of the tenants and the address for the tenants and that the tenants successfully signed for the registered mail packages on September 23, 2013. Tracking reports were submitted in evidence to support that the tenants accepted service of the registered mail by personally signing for the registered mail packages on September 23, 2013. Based on the above, I accept that the tenants were served as of September 23, 2013.

### Issue to be Decided

- Has the landlord provided sufficient evidence to support that the landlord is owed money or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and if so, in what amount?

### Background and Evidence

The landlord submitted a copy of a fixed term tenancy in evidence. The fixed term tenancy began on December 1, 2011, and was to expire on November 30, 2012, at which time required the tenants to provide vacant possession of the rental unit to the landlord. Monthly rent in the amount of \$1,425.00 was due on the first day of each month. The tenant's paid a security deposit of \$712.50 and a pet damage deposit of \$712.50 at the start of the tenancy, which the landlord continues to hold.

The landlord has submitted a monetary claim of \$2,000.00 comprised of the following:

1. Loss of rent for August 2012	\$1,425.00
2. Liquidated damages	\$500.00
3. Late fee for August 2012 late rent	\$25.00
4. NSF fee for December 2011 rent cheque	\$25.00
5. NSF fee for May 2012 rent cheque	\$25.00
<b>TOTAL</b>	<b>\$2,000.00</b>

The agents testified that the tenants vacated the rental unit on April 12, 2012; however continued to pay rent for the months of May, June and July of 2012. The landlord has claimed for loss of August 2012 rent as the agents testified that new renters were not found until September 1, 2012. The agents stated that the tenants did not provide a written forwarding address to the landlord after they vacated.

The agents referred to section 5 of the tenancy agreement, "Liquidated Damages" which indicates that the tenants will pay the landlord \$500.00 for liquidated damages if the tenancy ends before the fixed term tenancy agreement end date which was November 30, 2012. The landlord did not provide documentary evidence to support that the rental unit was advertised after the tenants vacated the rental unit. The agents testified that the landlord advertised the rental unit on three local free popular classified websites but did not have specific dates to provide of when the ads were posted to those websites. The agents stated that they had the following interest in the rental unit:

- 12 calls and 5 showing between March 4 to 8, 2012
- 4 calls and 3 showings between March 11 to 15, 2012 and ad was reposted at some time during this time period
- 10 calls and 3 showings between March 18 to 22, 2012

The agents were unable to provide any information regarding attempts to re-rent the rental unit after March 2012 and confirmed that they did not attempt to reduce the rent at any time in an effort to find new renters.

Regarding the NSF fees being claimed for December 2011 and May 2012, the agents did not provide a bank statement or copies of the NSF cheques to support that NSF fees were charged to the landlord. The agents referred to the tenants' account ledger submitted in evidence to support that an NSF fee was entered into the tenant ledger.

### Analysis

Based on the documentary evidence, testimony, and on the balance of probabilities, I find the following.

#### *Test for damages or loss*

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 landlord 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 tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

**Liquidated damages – I find** that section 5 of the tenancy agreement clearly supports that the tenants agreed to pay \$500.00 liquidated damages if they breached the fixed term tenancy. The tenants did breach the fixed term tenancy early by vacating the rental unit on April 12, 2012 and the fixed term tenancy agreement did not expire until November 30, 2012. As a result, **I find** the landlord has met the burden of proof

regarding this portion of their claim and that the landlord is entitled to compensation in the amount of **\$500.00** for liquidated damages pursuant to section 5 of the written tenancy agreement.

**Loss of rent and late fee for the month of August 2012** – There is no dispute that even though the tenants vacated on April 12, 2012, the tenants continued to pay rent for the months of May, June and July of 2012. The landlord is seeking loss of rent for August 2012 as new renters did not move into the rental unit until September 1, 2012. Section 7 of the *Act* requires that the landlord do whatever is reasonable to minimize the damage or loss under the *Act*. The agents failed to provide any details regarding their attempts to re-rent the rental unit after March 2012. In addition, the agents confirmed that they did not reduce the rent between March 2012 and September 2012 to assist in finding new renters. As a result, **I find** the landlord failed to comply with section 7 of the *Act* and has failed to meet #4 of the test described above when claiming for loss under the *Act*. Therefore, **I dismiss** this portion of the landlord's claim for loss of August 2012 rent and the associated late fee due to insufficient evidence, without leave to reapply.

**NSF fees** – The landlord has claimed a total of \$50.00 comprised of two NSF fees of \$25.00 each for the months of December 2011 and May 2012. The landlord failed to provide a bank statement or copies of NSF cheques or other banking information to support that the landlord was charged two \$25.00 NSF fees. I do not accept that the tenant ledger is sufficient evidence to support that NSF fees were charged, in the absence of copies of the NSF cheques or bank statements. Therefore, **I dismiss** this portion of the landlord's claim, due to insufficient evidence, without leave to reapply.

As a portion of the landlord's claim had merit, **I grant** the landlord the recovery of the filing fee in the amount of **\$50.00**.

Given the above, **I find** the landlord has established a monetary claim in the amount of \$550.00, comprised of \$500.00 for liquidated damages, plus the \$50.00 filing fee. The landlord continues to hold the tenants' security deposit of \$712.50 and pet damage deposit of \$712.50 for a total in combined deposits of \$1,425.00. The combined deposits have accrued \$0.00 in interest since the start of the tenancy.

**I ORDER** the landlord to retain \$550.00 of the tenants' security deposit in full satisfaction of the landlord's claim.

**I ORDER** the landlord to immediately return the balance owing to the tenants' for the remainder of the security deposit and full pet damage deposit in the amount of **\$875.00** to the tenants.

**I grant** the tenants a monetary order pursuant to section 67 of the *Act*, for the balance owing by the landlord to the tenants in the amount of **\$875.00**. Should the tenants require enforcement of the monetary order the tenants must serve the monetary order on the landlord and may file the monetary order in the Provincial Court (Small Claims) to be enforced by that court.

### Conclusion

A portion of the landlord's claim had merit. The landlord has been ordered to retain \$550.00 of the tenants' security deposit in full satisfaction of the landlord's claim. The landlord has also been ordered to immediately return the balance owing to the tenants' for the remainder of the security deposit and full pet damage deposit in the amount of **\$875.00** to the tenants.

The tenants have been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the landlord to the tenants in the amount of **\$875.00**. Should the tenants required enforcement of the monetary order, the tenants must serve the monetary order on the landlord and may file the monetary order in the Provincial Court (Small Claims) to be enforced by that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 20, 2013

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Residential Tenancy Branch

