



# 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      MNSD, MNR, MND, MNDC, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for damages to the unit – Section 67;
3. A Monetary Order for compensation – Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recover of the filing fee?

### Background and Evidence

The tenancy started on July 10, 2013 on a fixed term to July 31, 2014. Rent of \$1,000.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$500.00 as a security deposit. The tenancy agreement

provides for late fees of \$25.00 each and liquidated damages of \$500.00. The Tenant failed to pay rent for October 2013 and it was not until October 28, 2013 by email from the Tenant that the Landlord became aware the Tenant had moved out of the unit in September 2013. The Landlord claims unpaid rent for October and November 2013.

The Landlord states that the Tenant failed to leave the unit reasonably clean and undamaged and claims as follows:

- \$2.67 to replace a key. No invoice available;
- \$149.00 to clean the carpets. No photos of the carpets were provided and an invoice was provided;
- \$161.84 to replace damaged drapes. Photo and invoice provided; and
- \$61.60 to replace a damaged blind, photo and invoice provided.

### Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. Section 44 of the Act provides that a tenancy ends only when a landlord or tenant gives notice to end the tenancy. Section 45 of the Act provides that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results.

As the Tenant gave no notice to the Landlord until October 28, 2013 and as that this is the first time the Landlord was informed of the end of the tenancy, I find that the Landlord has substantiated an entitlement to unpaid rent of **\$2,000.00**. Given the liquidated damages provision and accepting that the Tenant has not paid this amount, I find that the Landlord has also substantiated an entitlement to **\$500.00**. Given the late fee provision in the tenancy agreement and accepting that the Tenant failed to pay a late fee for October 2013, I find that the Landlord has substantiated an entitlement to **\$25.00**.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Given the undisputed evidence that the Tenant damaged the drapes and blinds and considering the invoices and photos to support this evidence, I find that the Landlord has substantiated an entitlement to **\$161.84** and **\$61.60**. Given the lack of photos of a dirty or stained carpet and considering the unit was lived in for a little more than two months, I find that the Landlord has failed to establish that the carpet was left unreasonably clean and I dismiss this claim. Given the lack of an invoice, I find that the Landlord has not established the costs claimed and I dismiss this claim.

The Landlord is entitled to recovery of the \$50.00 filing fee for a total entitlement of \$2,798.44. Deducting the security deposit of \$500.00 plus zero interest leaves \$2,298.44.

Conclusion

I Order the Landlord to retain the \$500.00 security deposit plus interest in full satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$2,298.44**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: January 22, 2014

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Residential Tenancy Branch

