



# 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      MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord under the *Residential Tenancy Act* (the “Act”) for a monetary order to keep all or part of the security deposit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the filing fee.

An agent for the landlord (the “agent”) and an assistant to the agent appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent and her assistant were given the opportunity to provide their evidence orally and ask questions about the hearing process. A summary of the evidence is provided below and includes only that which is relevant to the matters before me.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”) was considered. The agent testified that the Notice of Hearing and evidence was served on the tenants by registered mail on January 13, 2014. The agent provided registered mail tracking numbers as evidence and confirmed that the names and addresses matched the names of the three tenants and the forwarding address provided by the tenants verbally on November 12, 2013. Documents sent by registered mail are deemed served five days after they are mailed pursuant to section 90 of the Act. The agent stated that the registered mail package for tenant “JO” was successfully delivered according to the online registered mail tracking website, while the registered mail packages for tenant “KD” and tenant “AS” were returned to the landlord as “moved/unknown”. Based on the undisputed testimony of the agent and the documentary evidence, I find the tenants were duly served with the Notice of Hearing and evidence on the fifth day after mailing, in accordance with the Act, which was January 18, 2014.

### Preliminary and Procedural Matters

During the hearing, the agent for the landlord requested to reduce the landlord's monetary claim from \$1,350.00 to \$1,073.74. I find that a reduction of the monetary claim does not prejudice the tenants. Therefore, the landlord was permitted to reduce their monetary claim from \$1,350.00 to \$1,073.74 as requested.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The agent confirmed that there were three fixed term tenancy agreements, the first of which began on September 1, 2011 and the last of which ended on October 31, 2013 when the tenants vacated at the end of the third fixed term tenancy agreement, which required the tenants to provide vacant possession of the rental unit at the end of the tenancy. Monthly rent in the amount of \$1,725.00 was due on the first day of each month. A security deposit of \$862.50 was paid by the tenants at the start of the tenancy, which the landlord continues to hold.

The landlord's monetary claim of \$1,073.74 is comprised of the following:

Item 1. Cleaning costs	\$450.00
Item 2. Outstanding water bills (two bills at \$267.83 and \$80.91)	\$348.74
Item 3. Five light bulbs (at \$15.00 per bulb)	\$75.00
Item 4. Junk removal and hauling	\$200.00
<b>TOTAL</b>	<b>\$1,073.74</b>

Regarding item 1, the landlord has claimed \$450.00 for cleaning costs related to cleaning the rental unit. The agent testified that the outgoing condition inspection was conducted on October 31, 2013 and that the tenants were present; however the tenants refused to sign the outgoing condition inspection report. The agent stated that the tenants failed to do any cleaning prior to vacating the rental unit. The landlord submitted sixty colour photos in evidence to support the condition of the rental unit at the end of

the tenancy. The agent referred to the condition inspection report which the agent stated supports that the rental unit was left in dirty condition at the end of the tenancy by the tenants. The agent referred to a cleaning invoice submitted in evidence in the amount of \$450.00 dated November 5, 2013, which is comprised of 15 hours of cleaning at \$30.00 per hour.

Regarding item 2, the landlord has claimed for \$348.74 in unpaid water bills. The landlord submitted two water bills; one for \$267.83 and one for \$80.91, which together total \$348.74. The tenancy agreement submitted in evidence indicates that water is not included as part of the monthly rent.

Regarding item 3, the agent referred to the outgoing condition inspection report which she stated supports that five light bulbs needed replacement after the tenants vacated the rental unit and that they charge a flat fee of \$15.00 per bulb which includes the labour to replace each bulb. The landlord failed to submit an invoice or receipt for the light bulbs to support this portion of their claim. The agent referred to a yellow page submitted in evidence which is a "Cleaning Checklist". On that document the agent referred to the light bulbs which indicate "\$15.00 at cost" as a "minimum charge."

Regarding item 4, the agent referred to the sixty colour photos submitted in evidence and an invoice dated November 2, 2013 which the agent stated supports that \$200.00 was paid for hauling and disposing of the tenants' personal items which were left behind by the tenants and for which the tenants stated they would return to pick up their items, but did not return as promised. According to the invoice the hauling and disposing included junk, including six garbage bags, lawn chairs, and a barbeque which were disposed and hauled away on November 1, 2013 at a cost of \$200.00 to the landlord.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, 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.

**Item 1** – The landlord has claimed \$450.00 for cleaning costs related to cleaning the rental unit. Section 37 of the *Act* states:

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

**37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(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, and**

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

**[emphasis added]**

Based on the above, I find that the landlord has met the burden of proof for this portion of their claim as the condition inspection report and photos support that the tenants did not leave the rental unit reasonably clean at the end of the tenancy as required by section 37 of the *Act*. I find the sixty colour photos and invoice submitted in evidence support that the rental unit required \$450.00 in cleaning as claimed. Therefore, **I find** the landlord is entitled to compensation in the amount of **\$450.00** for cleaning costs for this portion of their claim.

**Item 2** – The landlord has claimed for \$348.74 in unpaid water bills. The landlord submitted two water bills; one for \$267.83 and one for \$80.91, which together total \$348.74. The tenancy agreement submitted in evidence indicates that water is not included as part of the monthly rent. Given the above, **I find** the landlord has met the burden of proof for this portion of their claim and are entitled to compensation in the amount of **\$348.74** for the unpaid water bills which the tenants owe, and which were not included in the tenants' monthly rent.

**Item 3-** The agent referred to the outgoing condition inspection report which she stated supports that five light bulbs needed replacement after the tenants vacated the rental unit and that they charge a flat fee of \$15.00 per bulb which includes the "labour" to

replace each bulb. The landlord failed to submit an invoice or receipt for the light bulbs to support this portion of their claim. The agent referred to a yellow page submitted in evidence which is a "Cleaning Checklist". On that document the agent referred to the light bulbs which indicate "\$15.00 at cost" as a "minimum charge." **I find** the landlord failed to meet the burden of proof for this portion of their claim as they failed to prove part three of the test for damages or loss described above. The landlord failed to submit in evidence copies of receipts or invoices to support that their cost is \$15.00 per light bulb, whether or not that cost included "labour". On the balance of probabilities, I find that the amount being charged is both excessive and unreasonable. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, **without leave to reapply**.

**Item 4** - The landlord has claimed \$200.00 for disposal and hauling charges. The agent referred to an invoice dated November 2, 2013 and sixty colour photos submitted in evidence which I find supports that \$200.00 was paid for hauling and disposing of the tenants' personal items. I accept the undisputed testimony of the agent that the tenants abandoned some of their personal property by failing to return to the rental unit to retrieve them which the tenants promised to do. Given the above, **I find** the landlord has met the burden of proof for this portion of their claim and are entitled to compensation in the amount of **\$200.00** for disposal and hauling costs related to personal items left behind in the rental unit by the tenants.

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

**Monetary Order** – **I find** that the landlord has established a total monetary claim in the amount of **\$1,048.74** comprised of \$450.00 for cleaning costs, \$348.74 for unpaid water bills, \$200.00 for disposal and hauling charges, plus the \$50.00 filing fee. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit of \$862.50 which has accrued no interest since the start of the tenancy. **I ORDER** the landlord to retain the tenants' full security deposit of **\$862.50** in partial satisfaction of the claim, and I grant the landlord a monetary order under section 67 for the balance due by the tenants to the landlord in the amount of **\$186.24**.

### Conclusion

The landlord has established a total monetary claim of \$1,048.74. The landlord has been ordered to retain the tenants' full security deposit of \$862.50 in partial satisfaction of the landlord's claim. The landlord has been granted a monetary order under section 67 for the balance due by the tenants to the landlord in the amount of \$186.24. This

order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of 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: March 10, 2014

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Residential Tenancy Branch

