



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES PROPERTY MANAGEMENT (AGENT)  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MNR, MNSD, FF

### Introduction

This matter dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenant filed her Application, requesting a monetary order for money owed, or compensation under the Act or tenancy agreement, and to recover the filing fee for the Application.

The Landlord is seeking a monetary order for one month of rent, to keep the security deposit and pet damage deposits in partial satisfaction of the claim, and to recover the filing fee for the Application.

The Tenant and an Agent for the Landlord appeared at both hearings. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Preliminary Issues

The Tenant filed her Application on November 8, 2013. The first hearing in this matter proceeded on February 27, 2014, and was adjourned as the Tenant had not provided her photographic evidence to the Landlord. The hearing was reconvened on May 1, 2014. On March 31, 2014, the Tenant vacated the rental unit, and on April 1, 2014, the Landlord's Application was filed and joined with to be heard together. On May 1, the Agent for the Landlord confirmed she received the Tenant's photographic evidence and the Tenant confirmed she received the Landlord's Application and evidence.

### Issue(s) to be Decided

Is the Tenant entitled to the monetary compensation sought?

Did the Tenant breach a fixed term tenancy entitling the Landlord to the monetary compensation sought?

### Background and Evidence

This tenancy began on August 1, 2012, with the parties entering into a one year, fixed term tenancy agreement, which ended on July 31, 2013.

In June of 2013, the parties entered into a new one year fixed term tenancy agreement which was to run from August 1, 2013 to July 31, 2014. The Tenant had paid a security deposit of \$750.00 and a pet damage deposit of \$750.00 to the Landlord on August 3, 2012, which was carried forward to the new, second tenancy agreement. The monthly rent was \$1,500.00, payable on the first day of the month.

The tenancy agreement contained a liquidated damages clause of \$500.00, if the Tenant ended the tenancy early or breached the Act or tenancy agreement to the extent the Landlord could legally end the tenancy early. There were addendums to the tenancy agreement, and one of these was a signed recognition from the Tenant of the consequences of leaving the fixed term tenancy early.

On February 27, 2014, the Tenant provided the Landlord with a notice she was vacating the rental unit on March 31, 2014. A condition inspection report was performed on March 31, 2014, and the Tenant did not agree to allow the Landlord to retain the deposits.

The parties agree that on or about February 4, 2013, the Tenant emailed the Landlord regarding a high utility bill she received for heating the rental unit. The bill was for more than \$700.00.

The Tenant suggested to the Landlord that they make the rental unit house more energy efficient by installing better windows and doors. The Tenant had also offered to finish the basement for the owner, if the Landlord would supply the materials. On or about February 15, 2013, the Agents for the Landlord corresponded with each other regarding replacement of the upper level windows and doors. Copies of these emails were provided in evidence. Following this the Landlord determined that other renovations would occur to the rental unit.

### The Tenant's Claims

The Tenant claims the renovation work performed by the Landlord disrupted her quiet enjoyment of the rental unit for a period of more than four months, including July, August, September and October, and a portion of November 2013. The Tenant also claims for damages to personal property in the rental unit.

The Tenant testified that she did not know at first what work was going to be done on the house. She testified she received a text message from the Landlord on or about

July 2, 2013, informing the Tenant that the Landlord would come around to look at the building and decide on work to be done on the house the next day. The Tenant testified that the Landlord came and went from the rental unit until July 8, 2013.

The Tenant submitted in evidence a list of work that was to be done to the rental unit by the Landlord's various contractors, dated June 16<sup>th</sup>. The Tenant testified that the Landlord did not provide her with this list of work, but the list was provided to her by one of the trades-people performing the work for the Landlord, sometime after the work began. The list includes the work to be performed, but no dates are included.

The Tenant testified that the Landlord had planned on creating a second rental unit in the basement of the rental unit; however, the property was not zoned for this use, and the basement was completed as a, "granny suite". The work list included the following, and the Tenant testified as to the actual work done:

1. Gas line hookup;
2. Install gas furnace;
3. Install gas hot water heater;
4. There were to be two heat pumps, although only one was installed;
5. Fireplace insert;
6. Install two fuse boxes, although this was not done, as the property was not zoned for two suites;
7. Check basement is set up for conversion for legal suite, although this was not completed as the property was not zoned for two suites;
8. Enlarge basement bedroom windows to legal size using concrete cutter;
9. Excavate front of basement for patio area for suite, remove one window and install sliding glass doors, check front weeping tiles for drainage;
10. Remove basement door, frame and stucco, which was not done;
11. Sound proof basement and put in fire wall, which was not done;
12. Insulate walls and ceiling of basement;
13. Install sundeck on main floor, remove dining room window and install sliding glass door, both of which were done, and remove kitchen door, frame and stucco, which was not done; and
14. Install double pane windows in basement.

The Tenant testified that she did not get any written notices from the Landlord regarding when the work would be done, when the rental unit was going to be entered or who was entering the rental unit. The Tenant testified that the Landlord and her contractors would be coming in and out of the house, using the rental unit bathroom and changing their work clothes in the bathroom.

The Tenant stated she knew she had asked for some work to be done to lower the heating bill, and that this work would be a benefit to the Landlord in improving the property; however, the Tenant did not expect the work to become a project this large in scope.

The Tenant testified the work included jack hammers, concrete cutters, digging and excavating, constant pounding and banging, and workers coming in and out of the rental unit. The work went on for over four months according to the Tenant.

The Tenant testified that at times workers stood on her couch to do work, walked across her son's bed with their dirty boots, and that the work caused the interior of the rental unit to be covered in dust many times.

The Tenant claims that the work caused her to have a loss of quiet enjoyment of the rental unit. The Tenant claims for a reduction in rent of \$200.00 per month for July, August, September, October and into November of 2013, for a total of **\$1,000.00**, for the nearly five months of work.

The Tenant testified that while all the work was being done, the personal property of the Tenant was never covered and no contractor cleaning occurred after the work was done. The Tenant testified that throughout the work being done none of the workers removed their shoes or boots when they entered the rental unit. She stated that she understood there were WCB rules about wearing footwear, although there was significant dirt tracked into the home by the workers.

The Tenant testified that she spent at least five hours cleaning up after the workers and claims **\$125.00** for the cleaning.

The Tenant claims **\$100.00** to replace a bamboo rug that was damaged and left unclean by the workers. The Tenant also claims for the cleaning of one wool rug and one Asian rug, in the amount of **\$200.00**. The Tenant did not have an invoice for these rugs or the cleaning of them. The Tenant testified she had not had these cleaned yet.

The Tenant claims **\$599.00** to replace a television that was scratched during the work. She testified that the TV still works, although the screen is scratched. In evidence the Tenant submitted a receipt for the cost of the TV and both parties had provided photos of the TV.

In addition to the above, the Tenant testified that the workers used her hydro over the course of the work being done which caused an increase in her electrical bills. The Tenant testified that she averaged about \$175.00 a month in hydro bills before the work started, and for the four months or so of work she claims **\$175.00**, equivalent to one month, in increased hydro bills.

In reply, the Agent for the Landlord submitted that the work was started due to the request of the Tenant, as the hydro bill for heating had been very high. The Agent argued the Tenant asked for very specific work to be done and the work which was performed was a benefit to the Tenant.

The Agent explained that the Landlord lives in a different country, and did come to Canada to supervise the initial work. The Agent testified that the Landlord advised the

Agent that the trades-people doing the work should be the ones giving the notices to enter the rental unit to the Tenant.

The Agent testified that the Landlord had compensated the Tenant in September of 2013 for some of her losses, in the amount of \$98.34 for cleaning or laundry. The Agent further explained that the Tenant and the Landlord had talked about compensation but nothing had been resolved. The Agent explained that the Landlord had wanted the Tenant to pay the full amount of rent each month, and then the Landlord would return a portion of the rent to the Tenant at the end of the month.

The Agent testified that the Tenant had discussed moving out of the rental unit in October of 2013, and that other potential renters had been shown the rental unit. Nevertheless, the Tenant did not end the tenancy in October of 2013.

In summation the Tenant explained that she had simply wanted the windows upgraded, and did not ask for the extensive renovations in the rental unit. The Tenant explained that the Landlord wanted to renovate the basement to include an extra rental unit, although the property was not zoned for that and therefore, the plans had to change.

In summation the Agent for the Landlord explained that the renovations were a benefit to the Tenant and following an energy audit of the building, the Landlord determined it was financially feasible to do this work.

### The Landlord's Claims

The Agent for the Landlord testified and provided evidence that the Tenant and the Landlord had entered into a one year fixed term tenancy agreement, which was to run from August 1, 2013 to July 31, 2014, and the monthly rent was \$1,500.00, payable on the first day of the month.

The Agent testified that on or about February 27, 2014, the Tenant gave the Landlord a written notice that she was vacating the rental unit on March 31, 2014. A copy of the notice was not in evidence, although the Agent read the Tenant's letter during the hearing. The letter did not contain any suggestion from the Tenant that the Landlord was in breach of a material term or request the Landlord comply with a material term of the tenancy agreement. The letter set out the date the Tenant was vacating the rental unit, requested that they contact the Tenant by phone and explained the forwarding address for the Tenant would be supplied later. The Tenant agreed as to what the Agent read was in the letter.

In evidence the Landlord supplied a letter from their Agents dated March 11, 2014, and addressed to the Tenant explaining the consequences of breaking the fixed term lease early. The letter explained that the Tenant was still liable under the fixed term lease and suggested the Tenant may want to remain in the rental unit until other renters could be found, in order to reduce the costs to the Tenant. The outgoing condition inspection report was scheduled for March 31, 2014.

The Agent for the Landlord provided in evidence receipts for advertisements for the rental unit, which began to run on March 7, 2014, and continued on into April, after the Landlord's Application was filed. The Agent explained that the rental unit was still unrented at the time of the hearing on May 1, 2014.

The Agent for the Landlord and the Tenant met to do the outgoing condition inspection report on March 31, 2014. The Tenant provided a forwarding address in writing to the Agent on the outgoing condition inspection report. The Agent testified that the Tenant refused to allow the Landlord to keep the security deposit. The Landlord applied against the deposits the day after, on April 1, 2014.

The Landlord claims for loss of rent for April 2014 in the amount of **\$1,500.00**, and for the liquidated damages of **\$500.00**. The Landlord requests the deposits against the rent owed.

In reply, the Tenant testified that she left the rental unit cleaner than when she moved into it.

The Tenant argued that the tenancy agreement had been terminated on several occasions by the Landlord not providing notice to enter the rental unit, the Landlord and friends using the washroom in the rental unit, the Landlord and friends tracking dirt into the rental unit and not cleaning up after themselves.

The Tenant also argued that the Landlord did not give the Tenant the quiet enjoyment and freedom from unreasonable disturbance and exclusive use of the rental unit. The Tenant submits that she had many conversations with the Landlord about these issues.

During summation, both the Tenant and the Agent for the Landlord discussed their attempts to resolve this dispute through informal negotiations outside the hearing.

### Analysis

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 respective Applicant(s) 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 Respondent(s). Once that has been established, the Applicant(s) must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Applicant(s) did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

### The Tenant's Awards

Under section 28 of the Act and the tenancy agreement the Landlord was required to provide the Tenant with quiet enjoyment of the rental unit. This is balanced against section 32 of the Act which also requires the Landlord to maintain the rental unit to certain standards. Furthermore, under section 29 of the Act, the Landlord was required to provide written notice to enter the rental unit at least 24 hours before and not more than 30 days in advance of the intention to enter the rental unit.

In this instance I find the Landlord has breached section 28 of the Act, by failing to provide the rental unit free from unreasonable disturbance. I also find that the Tenant suffered a loss of use of portions of the rental unit during the renovations. The Tenant had paid full rent for full use of the rental unit and consequently suffered a loss of use of portions of the rental unit during these renovations.

I find that the work the Landlord had her contractors perform at the rental unit was far beyond anything that the Tenant requested or anticipated. While the Tenant would have benefitted to some degree from the work, it is clear the Landlord performed a great deal of renovations to the rental unit property beyond what the Tenant had requested, and in fact the Landlord intended to develop a second rental unit there as well (although ultimately that did not work out due to local zoning). Nevertheless, the majority of the work performed was for the Landlord's benefit.

I further find the Landlord failed to give the Tenant the required notices of when she would be entering the rental unit and when the workers would be entering the rental unit, in breach of section 29 of the Act and section 31 of the tenancy agreement. It was up to the Landlord to make sure the Tenant was informed of entries, the Landlord should not have left it up to the workers as they had no legal relationship with the Tenant, or obligation to do so, unless direct to do so by the Landlord.

Therefore, I allow the Tenant's claims for a reduction in rent of \$200.00 per month for July, August, September, October, and into November of 2013, for a total of **\$1,000.00**.

I accept the evidence of the Tenant, including the photographs, in regard to cleaning up after the workers and allow her **\$125.00** for the cleaning.

I find the Tenant had insufficient evidence to prove the bamboo rug was damaged beyond repair, and dismiss the claim to replace it.

However, based on the testimony and general photograph evidence of the messy conditions around the rental unit property and inside it, I find it is likely that the Tenant would have to have these rugs cleaned. I find though that the Tenant did not provide sufficient evidence of what it would cost to clean these rugs, so I award the nominal amount of **\$100.00** for these rugs to be cleaned.

As to the television that was scratched during the work, I find the Landlord should have instructed her contractors to have been diligent in protecting the Tenant's property in the rental unit. I accept that while the TV still works, it was scratched and the TV had been purchased new in March of 2013, so it was not very old at the time of renovations. However, I also find that the Tenant may have mitigated or prevented some of the loss by covering any sensitive electronics, such as the TV. Mitigation is required under section 7 of the Act, as set out below. Therefore, I find that the parties should split the cost of this, and I allow the Tenant **\$300.00** for compensation for damage to the TV.

As to mitigation, section 7 of the Act states:

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[Reproduced as written.]

I accept the Tenant's testimony that the workers used her hydro over the course of the work being done and this caused an increase in her electrical bills. However, the Tenant did not provide evidence of the increase to her bills, and therefore, I award the nominal amount of **\$100.00**, for the months the renovations occurred and the Tenant's electricity was used by the Landlord's contractors.



Therefore, I find that the Tenant has established a total monetary claim of **\$1,675.00** comprised of the above described amounts and the \$50.00 fee paid by the Tenant for this application, ***subject to any set off from the Landlord's claims below.***

### The Landlord's Awards

I find the Tenant breached the Act and the fixed term tenancy agreement by ending the tenancy without authority to do so.

The Tenant argued that she could end the fixed term tenancy early because the Landlord had breached section 31 of the tenancy agreement. Section 31 of the tenancy agreement sets out that,

“If a landlord enters or is likely to enter the rental unit illegally, the tenant may apply for dispute resolution under the Act to change the locks, keys, or other means of access to the rental unit and prohibit the landlord from obtaining entry to the rental unit.”

Furthermore, under section 45 of the Act a Tenant may not end a fixed term tenancy agreement, unless she had given the Landlord written notice that she considers the Landlord to be in breach of a material term of the tenancy agreement, and provide the Landlord a reasonable amount of time to correct the breach, and warn the Landlord that she would end the tenancy due to a failure to address the breach in that time. I find the Tenant failed to provide any such written notice to the Landlord.

In any event, the Tenant's own testimony was that the majority of the work had been completed in October and into November of 2013. The Tenant had insufficient evidence that the Landlord had entered the rental unit at any time in January, February or March of 2014.

Therefore, I find the Tenant breached the fixed term tenancy without authority under the Act or tenancy agreement, and the Landlord is entitled to rent for the month of April 2014, in the amount of **\$1,500.00**.

The Tenant had also signed on June 24, 2013, a statement that she understood the consequences of moving out early before the end of the fixed term tenancy agreement. The tenancy agreement and the statement referred to above both set out that the Landlord would be entitled to liquidated damages of **\$500.00** if the Tenant ended the tenancy early. I find this clause is not a penalty as it appears to be a genuine pre-estimate of the costs for the Landlord to re-rent the rental unit.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations

or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

Therefore, I find that the Landlord has established a total monetary claim of **\$2,050.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the Landlord may retain the deposits of **\$1,500.00** in partial satisfaction of the claim and I find the balance due to the Landlord is **\$550.00**, ***subject to set off against the Tenant's claims above.***

I set off the amount owed to the Tenant of **\$1,675.00** against the **\$550.00** owed to the Landlord and find the Tenant is allowed the balance due of **\$1,125.00** ( $\$1,675.00 - \$550.00 = \$1,125.00$ ).

The Tenant is granted an order in this amount payable by the Landlord, and this order must be served on the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

#### Conclusion

As described above, both parties were in breach of the Act and the tenancy agreement. Both parties were granted awards, and after the set off, the Landlord is ordered to pay the Tenant the sum of \$1,125.00

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: May 09, 2014

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Residential Tenancy Branch

