



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This matter dealt with a Landlord seeking a monetary order for compensation for damage to the unit site or property, for damage or loss under the Act, the regulations or the tenancy agreement, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail on May 11, 2014, in accordance with section 89 of the Act.

The Tenants confirmed that they had received the Landlord's hearing package.

### Issues to be Decided

1. Are there damages to the unit, site or property and if so how much?
2. Is the Landlord entitled to compensation for the damages and if so how much?
3. Are there damages or losses to the Landlord and if so how much?
4. Is the Landlord entitled to compensation for damage or loss and if so how much?
5. Is the Landlord entitled to retain the Tenants' security deposit?

### Background and Evidence

This tenancy started on May 1, 2012 as a fixed term tenancy for 1 year and then renewed with another fixed term tenancy on May 1, 2013 with an expiry date of April 30, 2014. Rent was \$1,250.00 per month payable on the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$625.00 at the start of the tenancy. The tenancy ended on April 30, 2014. Move in and move out condition inspection reports were completed and signed at the start and end of the tenancy.

The Landlords said the tenancy ended on April 30, 2014 and they completed a move out condition inspection on April 30, 2014. During that inspection the Landlords discovered the damage to the unit. As a result the Landlord is claiming the following compensation for the damage to the unit:

Cleaning and repairs	\$ 343.95
Carpet cleaning	\$ 139.65
Lost key fob	\$ 20.00
Painting and wall repairs	\$ 220.50
Tenants' portion of floor repairs	\$1,080.00
Filing Fee	\$ 50.00
Sub total	\$1,854.10

The Landlord continued to say that the unit was not cleaned correctly on move out and they had to hire a carpet cleaner to do the carpets, as well as a repair man to patch the wall, spot paint, and do additional cleaning and removal.

As well the Landlord said the Tenants did not return the visitor fob and it cost \$20.00 to replace. The Landlord included paid receipts for the cleaning, repairs and fob.

In addition the Landlord said the Tenants damaged the floors and they are claiming \$1080.00 as the Tenants' share of repairing the floors. The Landlord said she calculated this by taking the economic life of the laminate flooring at 10 years and then subtracting the age of the flooring (new in 2008) therefore the remaining life of the flooring is 10 years – 6 years = 4 years. The Landlord continued to say the estimate that they have to repair the flooring is for \$2,700.00 therefore the Tenants' portion would be  $\$2,700.00 \times 4\text{years}/10\text{ years} = \$1,080.00$ . The Landlord said the move out condition report shows damage to the floors and the Landlord submitted 33 photographs as supporting evidence for their claims for repairs and cleaning of the rental unit.

The Tenants said that the unit was not clean when they moved in and that some of the damages the Landlord is claiming are from the previous tenancy. The Tenant said the Landlord had them hire cleaners at the start of the tenancy to clean the unit which they were compensated for. As well the Tenant said the move in condition inspection report shows scratches to the floors though out the unit and the walls were indicated as dirty. The Tenant continued to say that the previous tenant had a dog and left the unit in a mess. As a result the Tenant said there was previous damage to the unit and the claims the Landlord is making are unjustified. The Tenant said they did not clean the carpets and he agreed to pay for the carpet cleaning, but he hired a professional cleaning company to clean the unit when they moved out and he believes the unit was clean when they left. The Tenant said they are not responsible for additional cleaning that the Landlord did.

Further the Tenant said the repairs to the unit, painting and floor repairs the Landlord is claiming is partially from the previous tenancy and wear and tear over this 2 year tenancy. The Tenant said the unit was a mess when they moved in so it is not possible to determine what wear and tear or damage was done in this tenancy or the previous tenancy. The Tenant said the move in condition inspection report supports his view of the situation as the move in condition report indicates damage or dirty on the floors and walls of the unit.

The Landlord said that she agreed the move in condition report shows the floors were scratched and the walls were dirty, but the Landlord said the floors and walls are damaged now.

The Parties were offered an opportunity to settle this dispute by mediation, as well as the Tenants' application to be heard at a later date, but both parties declined a settlement agreement.

The Landlord application further requested to recover the filing fee \$50.00.

The Tenants had no closing remarks.

The Landlord said in closing that she took photos to support her application and the photos were taken on April 30, 2014 not as the photo date indicated as April 29, 2014. The Tenant disputed this point and suggested the Landlord took the photos at a different time other than the move out inspection. The Landlord continued to say the Tenants did not tell her about the lost fob and the cleaning job the Tenants did was not adequate.

### Analysis

**The Act says in section 23:** (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

The reason for doing a move in condition inspection report is to determine the condition of the rental unit upon move in and have all parties sign that they agree to the condition. This report then can be used as a base line to measure damages during or at the end of a tenancy. In this situation a move in condition inspection report was done at the start of the tenancy and it showed the rental unit to be unclean and there was damage to the laminate flooring. The report indicates scratching on the flooring in the front entry, living room, dining room and kitchen. Consequently the base line to measure additional damage to the floor in this tenancy is in question. The move out condition inspection report also indicates scratches to the flooring with the notations of normal wear and tear and the need for repairs. In reviewing the reports I find it difficult to determine the extent of the damage to the floors from the previous tenancy to this tenancy. It is the Landlord's obligation to prove the amount of damage in a damage claim. In this case I find the Landlord has not met the burden of proving that amount of damage that happened in this tenancy and therefore the Landlord cannot prove the damage from this tenancy is more than normal wear and tear. Consequently I dismiss without leave to reapply the Landlord's claim of \$1,080.00 for floor damage.

**The Act says: Landlord and tenant obligations to repair and maintain**

**Section 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Further in reviewing the Landlord's claims for cleaning, repairs and painting in the amount of \$343.35 and \$220.50 for a total of \$563.85, I question whether these were a result of normal wear and tear or real damage caused by the Tenants. The Tenants said they hired a professional cleaning company to clean the unit and the Tenants provided the receipt. The Landlord agreed that the Tenant did this, but the Landlord was not satisfied with the job the Tenants' cleaning company.

With regards to the wall repairs and painting the Landlord did not know when the unit was painted last but knew it was not painted at the start of this tenancy. Therefore I find the wall repairs and painting to be normal wear and tear as the condition of the walls at the start of the tenancy is not established. With respect to the Landlord's claim for cleaning a tenant must leave the unit in a reasonably clean state and this does not

mean new tenant ready. I accept the Tenants hired a cleaning company to clean the unit on move out and I accept that this is considered reasonably clean. As a result I dismiss without leave to reapply the Landlords claims for \$563.85 for repairs, painting and cleaning as I find the Landlord's claims are a result of normal wear and tear not damage.

With respect to the carpet cleaning and the key fob both parties agreed that the Tenants are responsible for these items. I concur that the Tenants are responsible for the carpet cleaning in the amount of \$139.65 and the replacement fob at \$20.00. I award the Landlord these amounts. I order the Landlord to retain \$159.65 of the Tenants' security deposit and I order the Landlord to return the balance of the security deposit in the amount of \$465.35 within 15 days of receiving this decision.

As the Landlord was only partially successful in this matter I order the Landlord to bear the \$50.00 cost of the filing fee for their application that they have already paid.

### Conclusion

The Landlord is ordered to return \$465.35 of the Tenants' security deposits forthwith.

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: September 10, 2014

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Residential Tenancy Branch

