



# 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

Code MNR, MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for damages to the unit and an order to retain the security deposit in partial satisfaction of the claim.

The landlord's agent attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified that the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on May 26, 2014 and the package was successfully delivered and signed for by the tenant on May 30, 2014. A Canada post tracking number and a Canada post track was provided as evidence of service, the tenant did not appear. I find that the tenant has been duly served in accordance with the Act.

The landlord's agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The parties entered into a fixed term tenancy which began on March 1, 2013 and was to expire on February 28, 2014. Rent in the amount of \$650.00 was payable on the first of each month. A security deposit of \$325.00 was paid by the tenant.

The landlord claims as follows:

a.	Loss of rent for February 2014	\$ 650.00
b.	Liquidated damages	\$ 125.00
c.	Balance of rent outstanding and late fees	\$ 535.00
d.	Carpet cleaning	\$ 73.50
e.	Filing fee	\$ 50.00
	Total claimed	\$1,433.50

#### Loss of rent for February 2014

The landlord's agent testified that the tenant gave notice to end the fixed term agreement on January 1, 2014, as the tenant had told them that her personal situation had changed. However, the tenant was not entitled to give notice to end the tenancy as they were under a fixed term agreement. The landlord stated that the tenancy ended on January 27, 2014. Filed in evidence is a copy of the tenancy agreement.

The landlord's agent testified that on January 3, 2014, they started to advertise the rental unit in the local paper and on local popular websites and they were unable to find a new renter for February 2014. The agent stated that they seek to recover loss of rent for the month of February 2014, as that was the last month the tenant was responsible to pay rent under the fixed term agreement. Filed in evidence are copies of advertisement to re-rent the rental unit.

#### Liquidated damages

The landlord's agent testified that the fixed term agreement provided a clause that if the tenant breached the agreement the tenant would pay liquidated damages in the amount of \$250.00 as that was a pre-estimate for the cost of re-renting the premises, however, they are seeking to recover the lesser amount of \$125.00.

#### Balance of rent outstanding and late fees

The landlord's agent testified that the tenant failed to pay the outstanding rent arrears and late fees at the end of the tenancy in the total amount of \$535.00. Filed in evidence is the tenant's rent ledger which supports the landlord's claim.

### Carpet cleaning

The landlord's agent testified that the tenant did not clean the carpets at the end of the tenancy and the tenant agreed to pay \$100.00, however the actual cost to clean the carpets was \$73.50. Filed in evidence is a receipt for carpet cleaning which supports the landlord's claim.

### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Loss of rent for February 2014

Section 45 of the Residential Tenancy Act states:

*45 (2) 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,*

In this case, the evidence of the landlord's agent was that the tenant breached the fixed term tenancy by providing notice to end the tenancy on January 1, 2014, with an effective vacancy date of January 27, 2014. However, under the Act the tenant was not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement. I find the tenant has breached section 45(2) of the Act as the earliest date they could have legally ended the tenancy was February 28, 2014 as stated in the tenancy agreement.

As a result of the tenant not complying with the terms of the tenancy agreement or the Act the landlord suffered a loss of rent for February 2014; the landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the tenancy agreement or Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy.

However, under section 7 of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss. The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring.

In this case, the evidence of the landlord's agent was that the tenant gave notice to end the tenancy on January 1, 2014, and on January 3, 2014, they placed advertisement to re-rent the unit in the local paper and on popular local websites and were unable to find a new renter for the month of February 2014. As a result, I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover loss of rent for February 2014, in the amount of **\$650.00**.

Liquidated damages

In this case, the tenant signed a tenancy agreement which contained a clause that if the tenant breached the fixed term agreement they would pay the landlord the sum of \$250.00 for the cost of re-renting the premises. As I have previously found the tenant breached the Act, when they ended the tenancy earlier than the Act or tenancy agreement allow, I find the landlord is entitled to recover liquidated damages in the requested lower amount of **\$125.00**.

Balance of rent outstanding and late fees

I accept the undisputed evidence of the landlord's agent that the tenant failed to pay the outstanding rent arrears and late fees at the end of the tenancy. I find the tenant has breached section 26 of the Act when they failed to pay rent, when rent was due under the tenancy

agreement and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover money owed for unpaid rent and late fees in the amount of **\$535.00**.

#### Carpet cleaning

Under section 37 of the Act, the tenant is required to return the rental unit to the landlord reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Under the Residential Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenant is generally expected to clean the carpets.

I accept the undisputed evidence of the landlord's agent that the tenant did not clean the carpet at the end of the tenancy as required. I find the tenant has breached section 37 of the Act, when they failed to clean the carpets and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost of having the carpets cleaned in the amount of **\$73.50**.

I find that the landlord has established a total monetary claim of **\$1,433.50** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit of \$325.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,108.50**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

#### Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: October 1, 2014

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Residential Tenancy Branch

