



# 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:**

**MND, MNR, MNDC, MNSD, FF**

### **Introduction**

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent, damage to the rental unit, damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### **Preliminary Matters**

The tenant confirmed receipt of the landlord's evidence on July 21, 2014. The tenant did not make a written submission. The tenant indicated understanding of the claim, as set out in the monetary worksheet submitted and served by the landlord.

The water bill supplied as evidence was sent to the tenant, via regular mail on October 8, 2014. This mail is deemed served effective October 13, 2014, which is not at least 5 days prior to the hearing. This time-frame was required by the Rules of Procedure in effect at the time the application was made. Therefore, that evidence was set aside.

There was no claim for unpaid rent before me.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental property, cleaning costs and fees?

May the landlord retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy commenced on January 1, 2014; it was a fixed term ending January 31, 2015. Rent was \$1,515.00 due on the 1<sup>st</sup> day of each month. A security deposit in the sum of \$757.50 was paid.

The respondent tenant signed the tenancy agreement of behalf of his children and another individual; that were to reside in the rental unit as occupants. The respondent did not view the rental unit at any time; although he had lived in the same home for a 1 year period in 2004.

There was no dispute that the occupants, on behalf of the tenant, completed the move-in condition inspection report on December 31, 2013. The landlord said that the occupants were desperate to take possession of the home and declined the offer made by the landlord to clean the unit. The tenants signed the inspection report agreeing:

*"Tenants responsible for all furnishings left behind & understand that the home is to be cleaned upon MO."*

(Reproduced as written)

The tenancy agreement included a clause requiring the tenants to leave the unit free of damage and requiring the tenants to maintain sanitary standards. The addendum supplied as evidence imposed a \$25.00 late rent payment fee.

The landlord has made the following claim:

Cleaning and repairs	\$819.00
Remove piano	157.50
Remove garbage and furniture	880.95
Water bill	571.86
Bathroom repair	609.00
May 2014 late rent fee	25.00
<b>TOTAL</b>	<b>\$3063.31</b>

The tenant agreed to the cost of cleaning, indicated on the invoice as \$512.00 and the water bill claim. The balance of the claim was in dispute.

The move-in condition inspection report recorded a number of deficiencies with the rental unit. Multiple areas of wear and tear, items broken and in need of cleaning were indicated. The landlord said that the tenants accepted the unit in this condition.

The tenancy ended as the result of an undisputed 1 month Notice to end tenancy for cause; effective May 31, 2014.

The move-out condition inspection report was completed on June 1, 2014; at which time multiple photographs were taken of the unit. The report recorded the unit as dirty, filthy, with references to "stuff everywhere." The photographs supplied as evidence showed a unit that was in a state of disarray. Some items shown were of paint cans, items in a workshop, an old piano, graffiti on an interior door and exterior panel of the home, garbage outside the home, 2 couches, items in cabinets and on shelves throughout the unit, a table and 2 beds.

The landlord supplied an invoice for the cleaning costs; agreed to by the tenant, with the following charges:

- \$512.00 cleaning;
- \$128.00 replace family room door, graffiti patch holes in lower bedroom, replace storage cupboard door graffiti;
- \$120.00 supplies; and
- \$20.00 dump fees.

A photo of a wall in the basement showed holes, one with a beer can shoved into the wall. This was not indicated on the inspection report; the landlord said there may have been a poster over the damage. The landlord believed that the supply charge was related to the cupboard door. Photos showed a door and outer panel of the home covered in graffiti.

As the occupants agreed to retain the furnishings at the start of the tenancy, the landlord has claimed the cost of removing the piano and abandoned furniture that was left in the home. A photo of the piano that was in the basement showed what appears to be a derelict instrument. The landlord submitted a June 10, 2014 invoice for removal of the piano.

A June 10, 2014 invoice supplied by the landlord listed the following charges:

- \$480.00 garbage removal;
- \$246.00 dump fees;
- \$64.00 2 locks; and
- \$49.99 supplies.

The landlord said that the extensive amount of garbage left on the property had to be taken to the dump. Photographs showed the furniture left behind and refuse outside of the home; some of which appeared to have been on the property for some time. At the end of the tenancy only 1 of the 3 occupants attended to complete the inspection and

only that occupant's key was returned. The landlord immediately had the locks changed. The landlord believes the charge for supplies would have been for garbage bags and cleaning supplies.

On May 28, 2014 the landlord received a message that there had been a leak in the bathroom over the past week; a bucket had been placed under the leak. The message indicated that a plumber would be coming that day or the next. The landlord did not believe this was an emergency and it was not until May 30, 2014, when the landlord went to complete the inspection report with the tenants that she discovered the extent of the leak. A plumber was called to complete the repair.

Photographs of the bathroom walls show extensive growth of mold on the drywall. The landlord said that the leak must have existed for some time, resulting in the damage and need for a plumber. If the tenants had reported the problem earlier the need to repair walls could have been avoided. The landlord did not supply an invoice for the repair work. An estimate supplied in a July 17, 2014 email sent by the contractor indicated a cost of \$100.00 for material and \$480.00 for labour. The contractor planned on replacing the framing as well as the drywall. The move-in inspection report stated that the bathroom walls needed painting at the start of the tenancy that the windows were in bad shape and the door and faceplates were missing. No reference was made in relation to the bathroom at the end of the tenancy, other than missing blinds.

The tenant said that he felt the landlord should have taken more action at the start of the tenancy, to deal with all of the items left in the unit. He did not see the unit and the occupants, young students, accepted the unit in a less than acceptable state. The tenant did not dispute the fact that the unit was not cleaned, but did dispute the claim for removal of items that had been left by the previous occupants of the home. Some of the garbage appeared to have been in place for an extended period of time. The occupants signed agreeing to take on the home in its current state, but did not have any other options.

The tenant said the graffiti pre-existed and that there was no reference to all of the garbage in the inspection report. The tenant believes he should be responsible for \$100.00 of dump fees paid. The tenant did not understand what the supply fee represented; the amount claimed would have covered a lot of bags.

The bathroom was dark and dank and there had been a sewage back-up in the recent past, contributing to a moisture problem. Since it was moist in the basement the tenant does not know how long it might have taken for mold to grow. It could have grown quickly, given the moisture problem. The tenant said that a lack of maintenance in the home likely caused the mold growth; combined with the age of the building. . The venting in the bathroom was very old and appeared to be rotten.

The tenant said that the landlord is trying to pass on maintenance costs to the tenants.

The tenant did not dispute the late rent claim for May 2014. Rent was paid on May 6, 2014.

### Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Based on the mutual agreement of the parties, I find the landlord is entitled to compensation in the sum of \$512.00 for cleaning and the sum for the water bill.

I find that the derelict piano left in the basement of the home is not what would constitute furnishing, as set out in the notation made on the inspection report. I find furnishing would be classified as furniture, drapes or carpeting; not an instrument. I find that the agreement by the occupants to accept furnishings left in the home does not saddle them with responsibility for items that were clearly of no use at the start of the tenancy. The landlord has paid for removal of the piano, just as the landlord would have had to do at the start of the tenancy. Therefore, I find that the claim for removal of the piano is dismissed.

From the evidence before me I find, on the balance of probabilities that some items had been outside of the home for a considerable period of time. Old lumber, paint cans, items left on shelves in the workshop all appeared to have been on the property for an extended period of time. Therefore, I find that the total cost of refuse removal did include items that should have been removed at the start of the tenancy, by the landlord. However, the photographs also show items, such as garbage bags and items left in the home that appear to have been in place recently and would have required removal by the tenants.

Residential Tenancy Branch policy suggests that an arbitrator may award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the landlord/tenant.

Therefore, as the rental unit and property was not cleaned out at the start of the tenancy, in the absence of evidence of items that should have been removed by the landlord at that time, I find the landlord is entitled to minimal compensation in the sum of \$200.00 in total dump and garbage fees claimed. The balance of the claim is dismissed.

As only 1 of 3 keys was returned by the tenants I find that the lock replacement was reasonable and that the landlord is entitled to compensation as claimed in the sum of \$64.00. In the absence of any details of the supplies claimed, I find that this portion of the claim is dismissed. The landlord could only surmise what the cost of \$49.00 represented.

In the absence of a breakdown of taxes paid, I dismiss this portion of the claim.

I find, on the balance of probabilities, that the tenants did cause graffiti damage to a door and the outside of the home. This is based on the inspection report and the photographs taken at the end of the tenancy. In the absence of any reference to damage to the wall in the bedroom at the start of the tenancy, I find that the landlord is entitled to compensation for wall, door and cupboard repair, as claimed.

The landlord received an email that water had been leaking in the basement bathroom for a week and attended the home 3 days later to discover a leak and that mold had grown on the walls of the bathroom. Even if the tenants had waited to call the landlord, there was no evidence before me as to how long the leak may have been occurring or if the need for painting at the start of the tenancy was due to the presence of mold and moisture problems. The bathroom was in a basement of an older home, had a concrete floor and was in need of painting at the start of the tenancy. In the absence of evidence of any negligence on the part of the tenants and, given the state of the bathroom at the start of the tenancy, I find that the landlord is responsible for the plumbing repair and the repair to the walls.

The tenant did not dispute the late May 2014 rent payment. Therefore, as required by the tenancy agreement, in accordance with the Regulation, I find the landlord is entitled to a late fee in the sum of \$25.00.

Therefore, the landlord is entitled to the following compensation; the balance of the claim is dismissed:

	Claimed	Accepted
Cleaning and repairs	\$819.00	\$819.00
Remove piano	157.50	0
Remove garbage and furniture	880.95	264.00
Water bill	571.86	571.86
Bathroom repair	609.00	0

May 2014 late rent fee	25.00	25.00
TOTAL	\$3063.31	1,679.86

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's \$757.50 security deposit plus in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$972.36. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

### Conclusion

The landlord is entitled to compensation as set out above; the balance of the claim is dismissed.

The landlord is entitled to retain the security deposit.

The landlord is entitled to filing fee costs.

This decision is final and binding 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: October 27, 2014

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Residential Tenancy Branch

