



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 0946 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The landlords' agent (the agent) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The agent is an employee of the corporate landlord.

The agent testified that she served the tenant with the dispute resolution package (including all evidence before me) on 25 July 2014 by registered mail to the tenant's forwarding address. The agent provided me with a Canada Post customer receipt that showed the same. The agent testified that correspondence sent to this address was answered by the tenant. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

*Preliminary Issue – Landlords’ Request to Amend Application*

At the hearing the agent asked to amend the landlords’ application to include the cost of carpet cleaning, which had been accidentally excluded from the monetary order request. The agent provided both the Residential Tenancy Branch and the tenant with a copy of the receipt for the carpet cleaning in the evidence packages she provided with the landlords’ application. The agent provided me with a copy of the residential tenancy agreement signed by both parties that indicates that the tenant agreed that she was responsible for professionally cleaning the carpets in the rental unit when the tenant vacated the unit. The agent testified that she had overlooked adding the receipt into her totals on her application. I allowed this amendment—pursuant to paragraph 64(3)(c)—as the agent had provided a copy of the receipt to all parties, and professional carpet cleaning was agreed to by the tenant when she entered into the tenancy; thus, there is no undue prejudice to the tenant by allowing the landlords’ request amendment.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for damage or loss arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlords’ claim and my findings around it are set out below.

I was provided with a copy of the residential tenancy agreement. This tenancy began 3 May 2013. Monthly rent of \$650.00 was due on the first. The agent testified that the landlords continue to hold the tenant’s security deposit of \$325.00, which was collected 9 May 2013. The tenancy ended 30 November 2013 as part of a settlement agreement reached before the Residential Tenancy Branch.

The tenancy agreement set out at clause 3 that a washer and dryer were provided as part of the rental unit. The tenancy agreement included a term regarding carpet cleaning at clause 23 that established that the tenant was responsible for professional carpet cleaning at the end of the tenancy. The tenant also entered into an agreement regarding the tenant’s responsibility for strata fines and penalties (“Form K”).

The landlords provided me with a copy of the condition move in/out inspection report. The move-in inspection was conducted 9 May 2013. There is nothing remarkable about the move-in inspection report. The move-out inspection was conducted 30 November 2013. The move-out inspection noted the following relevant observations:

- “items left”
- “dirty” and
- “washer dryer missing”

The tenant did not attend the move-out inspection personally, but sent a friend in her place. The friend initialed a clause indicating that the tenant agreed that the landlords could retain the tenant's security deposit.

On 4 December 2013, the agent sent a letter to the tenant providing her with a copy of the move-out inspection report and stating that there were issues with cleaning and the missing washer and dryer.

The landlords provided me with several letters regarding the strata fine. On 27 August 2013, the landlords received a \$200.00 fine from the strata for screaming altercations, the tenant selling and using drugs, and eight reports of the police attending at the rental unit. The landlords provided the strata fine information to the tenant and asked that she pay the fine. A second \$200.00 fine was issued on 4 September 2013 for open drug use in the parking lot. The landlords have claimed for \$200.00 of these fines.

The landlords provided me with a photograph of the washer and dryer that was present in the rental unit when the tenant moved in. The landlords provided me with a picture taken after the end of the tenancy that shows that the washer and dryer are now missing. The agent testified that she reported the washer and dryer stolen to the police, but that the washer and dryer were not recovered. The landlords provided me with a receipt for the washer and dryer replacement. The receipt was for \$1,191.73. The agent testified that the owner of the rental unit told her that the dryer was approximately three-years old at the time it went missing.

The landlord provided me with a copy of the receipt for carpet cleaning. The receipt was dated 21 January 2014 and was for \$73.50.

The landlords provided me with a copy of the receipt for garbage removal. The receipt was dated 14 January 2014 and was for \$278.35.

The landlords provided me with a copy of the general cleaning bill for the rental unit. The receipt was dated 22 January 2014 and was for \$160.00.

The landlords provided me with various photographs showing the state of the rental unit at the conclusion of the tenancy. These pictures show various debris and boxes piled in the rental unit as well as on the patio of the rental unit, a dirty oven, and food items left in the refrigerator.

The landlords seek a monetary order of \$1,390.25:

Item	Amount
Strata Fine	\$200.00
Carpet Cleaning	73.50
Cleaning	160.00
Garbage Disposal	278.35
Washer and Dryer Replacement	953.40
Offset Security Deposit Amount	-325.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order Sought</b>	<b>\$1390.25</b>

### Analysis

Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

The photographic evidence (provided by the landlords) shows that the tenant did not leave the rental unit clean and undamaged. The oven was filthy and there was debris throughout the inside and outside of the rental unit. The landlords provided me with receipts for all of the cleaning required to bring the rental unit back into a state of repair.

I find that the landlords have proven, on a balance of probabilities, that they are entitled to recover their costs of \$511.85 in relation to cleaning the rental unit:

Item	Amount
Carpet Cleaning	73.50
Cleaning	160.00
Garbage Disposal	278.35
<b>Total Cleaning Costs</b>	<b>511.85</b>

I accept the agent's undisputed and sworn testimony that the tenant returned possession of the rental unit to the landlords without the washer and dryer.

The landlords have provided me with a receipt for the replacement of the washer and dryer. The total cost of replacement was \$1,191.73. *Residential Tenancy Policy Guideline* "40. Useful Life of Building Elements" provides me with guidance in determining damage to capital property. The useful life of washer or dryer is fifteen years. The agent testified that the driveway was approximately three-years old at the time they were taken. The purpose of damage is to return the claimant to his or her original position. As the value of the washer and dryer had depreciated by three fifteenths, the tenant is responsible for twelve fifteenths of the cost of repair, that is, \$953.40.

The landlords provided me with a copy of the tenancy agreement with the tenant that shows that the tenant agreed to pay any fines issued by the strata in respect of her and her visitors' behaviour. The landlords incurred \$400.00 in fines because of the tenant's behaviour or the behaviour of persons she permitted to be on the residential property. The landlords seek to recover \$200.00 of the \$400.00 in strata fines issued because of the tenant's behaviour. I find that the landlords are entitled to recover \$200.00 from the tenant.

The landlords applied to keep the tenant's security deposit. Subsection 38(4) of the Act allows a landlord to retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing. The tenant's friend signed the move-out inspection authorizing the landlords to retain the security deposit. I find that the tenant's friend was acting on the tenant's behalf and that by initialing the clause on the move-out inspection report allowing the landlords to keep the deposit the tenant's friend, acting as her agent, relinquished the tenant's rights to that security deposit. I allow the landlords to retain the security deposit of \$325.00 in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$50.00 filing fee paid for this application.

### Conclusion

I issue a monetary order in the landlords' favour in the amount of \$1,390.25 under the following terms:

<b>Item</b>	<b>Amount</b>
Strata Fine	\$200.00
Carpet Cleaning	73.50
Cleaning	160.00
Garbage Disposal	278.35
Washer and Dryer Replacement	953.40
Offset Security Deposit Amount	-325.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order Sought</b>	<b>\$1390.25</b>

The landlords are provided with these orders in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: January 26, 2015

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Residential Tenancy Branch

