



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      MNR MND MNDC MNSD FF

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlords on September 9, 2015. The Landlords filed seeking a Monetary Order for: unpaid rent; damages to the unit, site or property; money owed or compensation for damage or loss under the *Act*, Regulation, or tenancy agreement; to keep the security deposit; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by an Agent for the Landlord (the Landlord). Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise

No one was in attendance at the hearing on behalf of the Tenants. The Landlord provided affirmed testimony that each Tenant was served notice of this application and this hearing by registered mail September 11, 2015. Canada Post tracking receipts were submitted in the Landlords' documentary evidence. The Landlord stated she had confirmed the packages were signed received by checking the Canada Post tracking website.

Section 89(1) of the *Act* stipulates that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to a landlord, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

Based on the undisputed evidence of the Landlords, I find the Tenants were sufficiently served notice of this application and hearing, in accordance with Section 89(1) (c) of the *Act*. Accordingly, the hearing continued to hear the undisputed evidence of the Landlords in absence of the Tenants.

Issue(s) to be Decided

Have the Landlords proven entitlement to monetary compensation?

Background and Evidence

The Landlord submitted evidence that the Tenants entered into a fixed term written tenancy agreement that began on February 18, 2015 and was not set to end until February 29, 2016. Rent of \$800.00 was payable on or before the first of each month. On February 15, 2015 the Tenants paid \$400.00 as the security deposit. A move in condition inspection report was completed in the presence of a Landlord and a Tenant on February 16, 2015.

On August 7, 2015 the Landlords received a written notice to end tenancy from the Tenants. That notice indicated that the Tenants' notice would be effective August 31, 2015. The Landlord testified the Tenant agreed to conduct the move out inspection and condition report on August 31, 2015. However, when the Landlord attended the rental unit was vacant and unlocked a note was left of the counter stated the Tenant(s) would not be attending the move out inspection. A copy of that note was submitted into evidence.

The Landlord testified the Tenants ended their tenancy without paying the full amount of rent that was due August 1, 2015. She stated the Tenants had been in arrears for July 2015 rent and made a payment on July 29, 2015 of \$800.00 which paid the July rent in full and left a credit balance of \$175.00 which was applied to August 1, 2015 rent. No payments were received in August 2015 which left a balance owed for August 2015 of \$625.00 which the Landlord now seeks to recover.

The Landlord stated they were seeking the \$25.00 late payment fee for August 2015 rent plus the \$250.00 liquidated damages as provided for in section 10 and section 5 of the tenancy agreement. A copy of the tenancy agreement was provided into evidence.

The Landlord submitted they were not able to re-rent the unit until September 15, 2015 due to the Tenants' late notice. As such they were claiming loss of rent for September 1 – 14, 2015 in the amount of \$400.00.

The Landlord submitted photographic evidence; the condition inspection report form; and receipts for amounts claimed for cleaning and repairs as follows: \$68.25 carpet cleaning; \$164.06 cleaning; and \$219.06 for replacement of the master bedroom door.

## Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

**Section 7** of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(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.
- 7(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.

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

Under section 26 of the Act, a tenant is required to pay rent in full in accordance with the terms of the tenancy agreement, whether or not the landlord complies with this Act. A tenant is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

I accept the Landlords' undisputed evidence the Tenants failed to pay their August 1, 2015 in full in accordance with section 26 of the *Act*. Accordingly, I grant the Landlord's claim for unpaid rent in the amount of **\$625.00**.

Section 7 of the Regulations stipulates that a landlord may charge a tenant a non-refundable fee for late payments providing that the tenancy agreement provides for that fee.

The tenancy agreement provided for \$25.00 late payment fees in accordance with section 7 of the Regulations. The evidence supports the August 1, 2015 rent was late, as it was not paid. Therefore I find the Landlords have proven the loss and I award their claim for August 2015 late fees in the amount of **\$25.00**.

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into.

Based on the undisputed evidence, I accept the Landlord's submission that the Tenants gave notice to breach the tenancy agreement and vacated the property with no intention of upholding his financial requirements to the end of the fixed term tenancy agreement. Accordingly, I find the Landlords provided sufficient evidence to prove their claim for liquidated damages and I grant them monetary compensation in the amount of **\$250.00**, pursuant to section 67 of the *Act*.

Once the Landlords regained possession they were required to mitigate their losses by trying to re-rent the unit for as soon as possible, pursuant to section 7(2) of the *Act*, as listed above. I find there was sufficient evidence to prove the Landlords mitigated their loss as they were able to re-rent the unit as of September 15, 2015. However, the Landlords still suffered a loss of rent for September 1 – 14, 2015 due to the Tenants' breach. Therefore, I conclude the Landlords are entitled to loss of rent for the period of September 1 – 14, 2015 in the amount of **\$400.00**.

Section 37(2) of the *Act* provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and must return all keys to the Landlord.

I accept the Landlords' undisputed evidence that the Tenants left the rental unit requiring additional cleaning and repairs. Therefore, I find the Tenants breached section 37 of the *Act*. In addition, I find the Tenants' breach caused the Landlords to suffer a loss of \$68.25 for carpet cleaning; \$164.06 for cleaning costs; and \$219.06 to replace the master bedroom door. Accordingly, I grant the undisputed application for cleaning and repairs in the amount of **\$451.37**.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlords have succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the *Act*.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$400.00 security deposit since February 14, 2015.

I find this monetary award meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Unpaid August 2015 Rent	\$ 625.00
Late Fee August 2015	25.00
Liquidated Damages	250.00

Loss of Rent Sept 1-14, 2015	400.00
Cleaning and Repairs	451.37
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$1,801.37</b>
<b>LESS: Security Deposit \$400.00 + Interest \$0.00</b>	<b><u>-400.00</u></b>
<b>Offset amount due to the Landlords</b>	<b><u>\$1,401.37</u></b>

The Tenants are hereby ordered to pay the Landlords the offset amount of \$1,401.37, forthwith.

In the event the Tenants do not comply with the above order, The Landlords have been issued a Monetary Order in the amount of **\$1,401.37** which may be enforced through Small Claims Court upon service to the Tenants.

### Conclusion

The Landlords have succeeded with their application and were awarded monetary compensation of \$1,801.37 which was offset against the Tenants' security deposit leaving a balance owed to the Landlords of **\$1,401.37**.

This decision is final, legally 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: March 11, 2016

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Residential Tenancy Branch