



# 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            MNR, MND, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlord's agents (the landlord) attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the tenants confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary issues

The landlord had named a third respondent on their application. It was confirmed at the hearing that this respondent was an occupant of the rental unit and was not named as a tenant on the tenancy agreement. As occupants have no rights or obligations under the *Act* then I have amended the style of cause to remove this respondent's name.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord permitted to keep all or part of the security deposit?

- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The parties agreed that this tenancy originally started on September 01, 2012. The agreement was renewed on September 01, 2013 and expired on August 31, 2014. The tenancy ended on May 31, 2014. Rent for this unit was \$1,900.00 per month and was due on the 1<sup>st</sup> of each month in advance. The tenants paid a security deposit of \$950.00 on August 17, 2012.

The landlord testified that this property contained an upper and a lower unit; however, it was rented to the tenants as one complete unit. The tenants vacated the unit on May 31, 2014 effectively breaking their lease. The unit was listed immediately on the landlord's website and showings were conducted for prospective tenants. The landlord attempted to re-rent the unit as a whole unit as per this tenancy and as two separate units in order to mitigate the loss. New tenants were found for the upper unit and they took possession of that unit on July 01, 2014. The lower unit was not re-rented until January 22, 2015. The landlord testified that they suffered a loss of rent for the property and seek to recover \$2,500.00; comprised off \$1,900.00 for June and \$600.00 for July, 2014.

The landlord testified that the tenants left a lot of garbage at the unit which the landlord had to dispose of. The landlord referred to their photographic evidence showing a table piled with discarded belongings and other discarded belongings in the laundry room. The landlord testified that the tenants had even left washing in the washer. The landlord testified that the tenants failed to maintain the lawn and the grass also had to be cut. The landlord seeks to recover the following costs to remove and dispose of the garbage and for lawn maintenance:

\$25.00 for dump fees

\$70.00 for garbage clean up and lawn maintenance.

The landlord testified that the tenants did not leave the rental unit reasonable clean. The landlord had to clean the unit before new tenants moved in. the landlord seeks to recover the cost of this work which took six hours at \$20.00 an hour to a sum of \$120.00. The landlord testified that the tenants did not clean the carpets at the end of the tenancy. The landlord seeks to recover the amount paid for professional carpet cleaning of \$100.00.

The landlord testified that the tenants left some damage on the walls of the unit, Screws had been put in the walls to hang things and there were dents and scrapes beyond normal wear and tear. The landlord referred to their photographic evidence showing the walls in the unit. The landlord seeks to recover the costs for their handyman to come in and scan the walls to obtain the correct colour match, to repair the holes and to deliver the paint to the new tenants who agreed to paint the unit at a cheaper rate than a professional painter. The landlord seeks to recover the following costs:

\$172.71 for the handyman

\$300.00 provided to the new tenants to paint.

The landlord testified that the tenancy agreement provides for late fees and NSF fees for dishonored rent cheques. The tenants rent cheque for March, 2013 was returned by the bank. The landlord seeks to recover \$25.00 for this. The landlord withdrew their claim for an NSF fee of \$25.00 for June, 2014.

The landlord testified that there is a clause in the tenancy agreement which provides for a liquidated damages fee of \$500.00 if the tenants end their tenancy before the end of the fixed term. The landlord testified that as the tenants ended the tenancy in May instead of August, 2014 the landlord seeks to recover liquidated damages of \$500.00.

The landlord seeks an Order permitting the landlord to keep the security deposit of \$950.00 to be applied against their monetary claim. The landlord also seeks to recover the filing fee of \$50.00.

The tenants testified that they did break the lease but spoke to the landlords agent SS about this as they had purchased a house. The tenants do not dispute that they owe rent to the landlord.

The tenants agreed they did leave some belongings in the unit after they moved out; however, the tenants testified that the items shown on a table in the landlord's photographic evidence did not belong to the tenants but rather were items belonging to the owners of the house that was stored in the shed. The only item shown in this photograph that belonged to the tenants was a level. The tenants testified that some of the clothes shown may have been the tenants.

The tenants testified that they had cut the grass before they vacated the rental unit. If the landlord did not send someone over to the property to cut the grass between the period after the tenants vacated and new tenants moving in then the grass would have grown. The tenants testified that they had been unable to cut the back lawn as it was full of rocks but it had been weed wacked.

The tenants testified that they had done some cleaning in the unit, the walls were washed, the fridge was cleaned and the carpets had been steam cleaned. The landlord's maintenance man came into the house wearing his boots and the lights were full of water. The tenants testified that the blinds at the windows were really filthy when they moved into the unit. SS had allowed the tenants to move in a few days earlier but the unit had not been cleaned and this is shown on the move in inspection report. The tenants testified that both levels of the units were left reasonable clean and they disputed the landlord's claim for cleaning costs.

The tenants testified that they had hung approximately 10 pictures and two shelves throughout the unit. Any holes left must be considered to be normal wear and tear as the landlord did not provide instructions as to how to hang pictures. The tenants testified that the owners had a lot of paint cans with paint for the house left in the unit. The tenants disputed the landlord's claim for painting.

The tenants testified that they had given the landlord three months' notice and SS agreed CL could go to a month to month tenancy and he then rented the bottom unit on his own. The tenants disputed the landlord's claim for liquidated damages.

The tenants agreed a rent cheque in March 2013 was NSF and they do not dispute the landlord's claim to recover an NSF fee of \$25.00.

The tenants agreed at the hearing that the landlord can keep the security deposit to be offset against the loss of rent.

The landlord testified that they have no knowledge of any of the home owner's belongings being in the unit or shed. The landlord testified that the lawns were cut on June 18, 2015 after the

tenants had vacated on May 31, 2016. The landlord testified that the toilets had been cleaned at the end of the tenancy but the carpets, windows and blinds were left really dirty. The unit had to be cleaned before it was re-rented. The landlord testified that there was no useable paint in the cans left in the shed. The landlord purchased an eggshell paint as there were so many colours of paint in the unit and it needed to be painted quickly to mitigate the loss.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for a loss of rent; I am satisfied from the undisputed testimony before me that this was a fixed term tenancy that was not due to end until August 31, 2014. The tenants vacated on May 31, 2014 and effectively broke their tenancy agreement. I am further satisfied that the landlord attempted to mitigate the loss by getting the unit prepared and re-rented as quickly as possible and advertised the unit as a whole unit and as two separate units. The upper unit was re-rented for July 01, 2014 and the lower unit was re-rented on January 02, 2014. It is therefore my decision that the landlord is entitled to recover the amount requested of **\$2,500.00**.

I am also satisfied that there was a clause in the tenancy agreement that allowed for the landlord to charge the tenants the amount of \$500.00 in liquidated damages if they ended the tenancy before the end of the fixed term. I find this amount to be a genuine pre-estimate of the costs to re-rent the unit and therefore grant the landlord's claim to recover **\$500.00**.

With regard to the landlord's claim to recover \$25.00 in dump fees, I am not satisfied that all the belongings shown in the landlord's photographic evidence belonged to the tenants. When the tenant's evidence contradicts that the landlord then the landlord must provide corroborating evidence to meet the burden of proof. The landlord has insufficient evidence to meet the burden of proof in this matter and I therefore find that only a small portion of the belongings taken to the dump belonged to the tenants and therefore the landlords claim for \$25.00 for dump fees is dismissed.

With regard to the landlord's claim to recover \$70.00 for garbage removal and lawn maintenance, as I have found that only a small portion of the belongings shown were the tenants' belongings then this section of the landlords claim must be reduced. Furthermore, I am not satisfied that the landlord is entitled to charge the tenants costs to cut the lawn after they vacated the rental unit. The tenants testified that the lawn was cut prior to them vacating and the back lawn was weed wacked due to stones. There is insufficient evidence from the landlord to show the lawn was not cut prior to May 31, 2014 and the landlord agreed the lawn was not cut until June 18, 2014. I therefore limit the landlord's claim to **\$15.00** to remove the tenants' belongings from the laundry room.

With regard to the landlord's claim for cleaning the unit, the tenants testified that the move in inspection report shows the unit was not clean at the start of the tenancy; however, upon review of the move in report it clearly shows that the unit was clean with the exception of the stove and the laundry room. The tenants testified that the unit was left reasonable clean at the end of the tenancy, yet the move out report clearly shows that many areas of the unit were not cleaned. The tenants did not attend the move out inspection of the unit; however, this does not make the findings of the move out inspection report invalid. As the stove in the lower level and the laundry room were not clean at the start of the tenancy the tenants are not required to clean these areas at the end of the tenancy. I therefore limit the landlord's claim for cleaning to an amount of **\$100.00**.

With regard to the landlord's claim for carpet cleaning; the tenants testified that they steam cleaned the carpets, yet the move out inspection report clearly shows that the carpets in bedroom two and the living room downstairs are dirty. I am therefore satisfied that the landlord has met the burden of proof that these carpets required cleaning and award the landlord the amount of **\$100.00**.

With regard to the landlord's claim to recover the cost of the handyman services in matching and obtaining paint for the unit and repairing holes and dents in the walls of the unit and \$300.00 for painting the unit. The tenants testified that they were not informed by the landlord as to how to hang pictures in the unit and any damage to the walls is reasonable wear and tear. I refer the parties to the Residential Tenancy Policy Guidelines #1 which states, in part, that:

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.

Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

Having considered the landlord's photographic evidence and the comments made on the move out inspection report I must conclude that no instructions were provided to the tenants as to how to hang pictures and any damage to the walls has been caused through the reasonable use of the unit and normal wear and tear and that the holes in the wall made to hang pictures do not constitute an excessive amount. I therefore dismiss the landlord's claim of \$172.71 for the handyman and the landlord's claim for \$300.00 for painting the unit.

With regard to the landlord's claim for an NSF fee of \$25.00 for March, 2013; I refer the parties to the Residential Tenancy Regulations s.7 which states:

**7 (1) A landlord may charge any of the following non-refundable fees:**

*(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;*

*(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.*

I have reviewed the tenancy agreement and find there is a clause contained in the agreement that provides for a fee of \$25.00 for the return of a tenant's cheque by a financial institution. Consequently, pursuant to s. 7(1)(d) of the regulations I find the landlord is entitled to recover **\$25.00** from the tenants.

I Order the landlord to retain the tenants' security deposit of **\$950.00** pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the landlord's monetary award,

As the landlord's claim has some merit I find the landlord is entitled to recover the filing fee of **\$50.00** from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord pursuant to s. 67 of the *Act* for the following amounts:

Loss of rent	\$2,500.00
Liquidated damages	\$500.00
Garbage clean up	\$15.00
Cleaning	\$100.00
Carpet cleaning	\$100.00
NSF fee	\$25.00
<b>Subtotal</b>	<b>\$3,240.00</b>
Less security deposit	(-\$950.00)
Plus filing fee	\$50.00
<b>Total amount due to the landlord</b>	<b>\$2,340.00</b>

#### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,340.00**. The Order must be served on the respondents. Should the respondents fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

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: May 03, 2016

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Residential Tenancy Branch