



# 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, MNSD

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; and for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit.

An agent for the landlord and one of the tenants attended the hearing, and the tenant also represented the other named tenant. The parties each gave affirmed testimony and the landlord called 2 witnesses who also gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses with respect to the testimony and evidence provided by both parties, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised, and the parties agree that all evidence has been exchanged.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for unpaid utilities?
- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?
- Should the landlords be permitted to retain a portion of the security deposit in full satisfaction of the landlord's claim?

### Background and Evidence

**The landlord's agent** testified that this fixed term tenancy began on July 1, 2015 and was to expire on June 30, 2016, however the tenants actually vacated the rental unit on March 30, 2016. The tenants wanted to vacate the rental unit earlier than the end of the

fixed term, and the landlord was able to find a new tenant to re-rent effective April 1, 2016.

Rent in the amount of \$2,000.00 per month was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. On May 30, 2015 the landlord collected a security deposit from the tenants in the amount of \$1,000.00, and although the tenancy agreement, a copy of which has been provided, specifies a pet damage deposit in the amount of \$1,000.00, the landlord's agent testified that the tenants never paid any portion of it. The landlord has returned \$244.44 of the security deposit to the tenants.

A move-in condition inspection report was completed by the parties at the beginning of the tenancy, and another agent of the landlord attended for the move-out condition inspection with the tenants. A copy of both reports has been provided signed by a tenant at move-in agreeing to the report at the beginning of the tenancy, and the move-out portion shows a signature of a tenant disagreeing to the condition at the end of the tenancy.

The landlord's agent testified that the tenants did not leave the rental unit clean at the end of the tenancy, and has provided a Monetary Order Worksheet setting out the following claims:

- \$280.00 for cleaning;
- \$210.00 for exterior cleaning and lawn maintenance;
- \$65.92 for an unpaid water bill;
- \$164.64 for another unpaid water bill; and
- \$35.00 for replacement of interior light bulbs.

An invoice for cleaning has been provided, which shows a charge of \$40.00 per hour for 7 hours for 2 people, and the services rendered were:

- Mold removal;
- All windows and sliders washed up and down stairs;
- Bathrooms cleaned;
- Grout scrubbed;
- Floors and walls washed up and down stairs;
- Vacuuming;
- Light fixtures taken down and cleaned;
- Appliance moved and cleaned behind/underneath.

The landlord's agent testified that the exterior of the home was also not left reasonably clean and has provided an invoice which shows 10.5 hours of labor from April 7 to April 15 totalling \$210.00, which the landlord claims as against the tenants.

The landlord has also provided photocopies or facsimile copies of photographs which are not clear and mostly show black marks, none of which are clear enough to illustrate the condition of the inside or outside of the rental unit. However, the landlord's agent testified that there wasn't much time between the move-out condition inspection and the new tenant's tenancy, and would have been happy if the rental unit was move-in ready.

The landlord has not received a forwarding address of the tenants in writing.

The landlord's agent further testified that the tenants left 2 water bills outstanding, one in the amount of \$165.94 and the other \$65.92 which includes interest charged by the utility.

**The landlord's first witness** (AB) testified that she attended for the move-out condition inspection and found the flower beds at the exterior of the rental unit to be overgrown with weeds, lawn not mowed, and cigarette butts strewn throughout. It was very untidy, and not close to the condition at move-in.

When the witness entered the rental unit for the move-out condition inspection she noticed an odor, and testified that the grout in the floor was so dirty that the sand color was actually a chocolate brown color with grime. The tenants had been given a check-list concerning what was expected for move-out, but the tenants didn't follow it. Mold was found in the window tracks, walls in many areas were quite marked with finger prints, wear and tear, and not wiped down. Seven light bulbs were burned out and windows had not been cleaned.

The move-out condition inspection report was signed by the tenants, but they did not include a forwarding address, and no forwarding address was received by the landlord. The witness obtained an address for the tenants after the witness' assistant called the tenants.

**The landlord's second witness** (CH) testified that the tenants owned another home which they rented to other tenants. The tenants had emailed the witness saying that they had to move back into that residence because their tenant moved out without paying rent, and the tenants could not afford a mortgage and rent for this rental unit. The witness looked up that address for serving the Landlord's Application for Dispute Resolution. The witness did not receive a forwarding address in writing from the tenant by email or otherwise.

**The tenant** does not dispute that the water bills remain outstanding, and the tenants are responsible for \$231.86.

The tenant also agrees that the landlord has returned the sum of \$244.44 of the security deposit, but the tenant does not agree to the balance of the landlord's claim.

The move-out condition inspection report shows that the fridge was not clean at move-out, however the tenants have provided photographs that depict a clean fridge. During the move-out condition inspection, the landlord's witness said that floors still contained a film and had to be re-washed, and carpets had to be re-vacuumed because they had been walked on. The tenants cleaned everything, including bathrooms and had a professional carpet cleaner attend the day prior to the move-out condition inspection. Although the tenant didn't use a toothbrush, the tracks of the window in the kitchen were wiped and all windows had been washed inside. The tenant testified that there is nothing in the move-out condition inspection report showing that they were left unclean or with mold in the tracks. The move-out condition inspection report also shows that the thermostat doesn't work, and the landlord's agents told the tenants 3 times since the beginning of the tenancy that it would be repaired, but never was.

During the inspection, the landlord's witness mentioned several things that she said needed attention, but when asked where the dirty parts were, the landlord's witness said she wasn't going to discuss it. The tenants have provided 23 actual photographs which the tenant testified were taken during the move-out condition inspection on March 30, 2016.

The tenant could not reach the light fixtures and didn't have a ladder. The tenants left a box of 4 light bulbs and an additional one for the bathroom.

With respect to the exterior of the rental unit, the tenant testified that the lawn was mowed which was seen by the landlord's witness, and a photograph has been provided. There were no cigarette butts left around, and dead plants had been removed from the flower beds. The company hired by the landlord is a company owned by the landlord's agent.

The tenants did not receive a copy of the move-out condition inspection report until served with the landlord's evidentiary material for this hearing. The tenant provided a forwarding address to the landlord in an email and assumed the landlord received it.

### Analysis

The tenant does not dispute the water bills, and therefore, I find that the landlord is owed \$231.86.

Where a party makes a claim for damages against another party, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate such damage or loss.

In this case, the landlord claims \$280.00 for cleaning the interior and \$210.00 for cleaning the exterior of the rental unit. A tenant is required to leave a rental unit at the end of a tenancy reasonably clean and undamaged except for normal wear and tear. A tenant is not required to leave a rental unit at the end of a tenancy in a pristine condition that a landlord may want for re-renting; that is the landlord's responsibility. The regulations state that the condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy, however the tenants did not agree to the report when it was completed at move-out.

I have reviewed the photographs of the tenants and have compared them to the condition inspection reports, and I am not satisfied that the landlord has established that the tenants did not leave the rental unit reasonably clean inside or outside. I agree with the testimony of the tenant that the move-out condition inspection report shows that the fridge is dirty which is contrary to the photograph. The landlord's witness testified that 7 light bulbs were burned out, but made no mention of the tenant having left bulbs for the landlord.

I also consider the testimony of the tenant that the landlord's witness refused to discuss the allegations that the rental unit wasn't clean enough during the move-out condition inspection. The landlord didn't dispute that the carpets had been professionally cleaned the day prior to the inspection. The landlord's first witness also testified that walls were marked with wear and tear. Normal wear and tear is not a claim under the *Act*.

In the circumstances, I am not satisfied that the landlord has established that the damage or loss claimed was a result of the tenants' failure to comply with the *Act* or the tenancy agreement, and I dismiss that portion of the landlord's claim.

The landlord has returned \$244.44 of the \$1,000.00 security deposit, and having found that the tenants are liable, by consent, to the \$231.86 water bills, I find that the tenants

are entitled to recovery of the difference. However, since the landlord has been partially successful with the application, the landlord is entitled to recovery of the \$100.00 filing fee. I order the landlord to return the balance of \$423.70 to the tenants, and I grant a monetary order in favour of the tenants for that amount.

### Conclusion

For the reasons set out above, I hereby order the landlord to keep \$231.86 of the security deposit and I grant a monetary order in favour of the tenants as against the landlord for the balance of the security deposit held in trust by the landlord in the amount of \$423.70.

This order is final and binding and may be enforced.

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: September 27, 2016

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Residential Tenancy Branch