



# 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      MND, MNDC, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damage to the unit - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to any of the monetary amounts claimed?

### Background and Evidence

The tenancy started on September 1, 2014 and ended on July 31, 2016. Rent of \$2,750.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,375.00 as a security deposit. The Tenant provided its forwarding address at move-out.

The Landlord states that a previous agency represented the owner at the move-in and move-out inspection and the Landlord does not have direct knowledge of those inspections. The Landlord provided a copy of a move-in and move-out report that does

not carry any signature of the Tenant for either inspection. The Tenant states that a move-in inspection was conducted while the owner was still in the process of moving out and the Tenants were not satisfied with the state of the house at this point. The Tenant states that no copy of this report was provided to the Tenant and no further inspection was done after the owner finished its move out.

The Tenant states that the Tenant and the previous agent mutually conducted the move-out inspection and a report was filled out but no copy was provided to the Tenant. The Tenant states that at the time the agent wanted to look it over and was going to get back to the Tenant. The Tenant states that during the walk-out inspection the agent was marking damages that were pre-existing and it appeared to the Tenant that the agent had no experience.

The Landlord states that the Tenants failed to leave the unit reasonably clean and without damage. The Landlord claims as follows:

- \$259.88 for the cost of cleaning the unit. The Landlord states that no cleaning was done at all as indicated by the move-out report;
- \$340.00 for the cost of cleaning the carpet. The Landlord states that the carpet was not cleaned at all;
- \$220.50 for the cost of gardening. The Landlord provides an invoice for this work that includes mowing the lawn, trimming the hedges and moss treatment. The Landlord states that the tenancy agreement addendum provides that the Tenants maintain the lawn and short shrubs;
- \$1,391.26 for the estimated cost of damage to the carpet. The Landlord states that this amount represents the original cost of the carpet. The Landlord states that the Tenant left an approximate three foot long snag on the carpet.

The Landlord provided photos of a piece of carpet and invoices for the costs claimed. The Landlord states that the unit was not rented to any other person after the end of the tenancy as the unit had been sold.

The Tenant states that he was very surprised by the cleaning claims as the unit was thoroughly cleaned on July 31, 2016, including the carpets that were cleaned by a professional company. The Tenant states that the receipt for this cleaning was given to the previous agent as requested. The Tenant provided a name of the cleaning company. The Tenant states that the yard was maintained during the tenancy and right up to the end of the tenancy. The Tenant states that during the tenancy the Landlord would attend to trim the taller trees and shrubs. The Tenant states that no inspection was made of the yard at move-out. It is noted that the move-out report does not indicate any damage to the yard and refers to photos but no photos were provided by the Landlord. The Tenant states that no snag was ever noticed on the carpet during the tenancy and the Tenant states that the photo appears to depict that area of the carpet that was joined by a seam.

### Analysis

Section 24 of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not, inter alia, provide a copy of that report to the tenant. While it is questionable whether a move-in condition inspection could even be determined to have been carried out during a move-out of the outgoing residents, based on undisputed evidence that no copy of the move-in report was provided to the Tenant I find that the Landlord's right to claim against the security deposit for damages to the unit was extinguished at move-in.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit.

Policy Guideline #17 provides as follows:

Return of double the deposit will be ordered if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.

As the Landlord's right to make an application to claim against the security deposit was extinguished at move-out, the only option at the end of the tenancy was for the Landlord to return the full security deposit to the Tenant. The Landlord was still able to make its application to claim for damages. Since the Landlord retained the security deposit and claimed against the security deposit I find that the Landlord must now repay the Tenant double the security deposit plus zero interest of **\$2,750.00**.

Section 37 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.

The Landlord provided evidence of having little to no knowledge of the condition inspections. I note that the move-out report is filled with inconsistencies, such as having both a check mark indicating satisfactory and a note beside it stating "needs cleaning". This occurs at least in two areas in relation to marks on walls and window coverings. There is no "C" indicating "needs cleaning" anywhere in the move-out areas. There is nothing in the move out report indicating dirty carpets or problems with the yard. There are no photos of the yard or the unit. Given the Tenant's direct evidence I prefer the Tenant's evidence in relation to the condition of the unit and yard at the end of the tenancy. I find therefore that the Landlord has not substantiated on a balance of probabilities that the unit, including the carpet, was left unclean or the yard was left defective.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. The photos of the carpet do not provide any means of identifying the size of what may be a snag. However, even if there was a long snag on the carpet

there is no evidence that the presence of the snag caused the Landlord any loss. It was not replaced or patched and the unit was sold without any evidence of loss due to the carpet. For the above reasons I find on a balance of probabilities that the Landlord has not substantiated that Tenant left the yard and house unclean or caused any loss to the Landlord. I therefore dismiss the Landlord's claims and in effect the application is dismissed in its entirety.

### Conclusion

The Landlord's application is dismissed. I grant the Tenant an order under Section 67 of the Act for **\$2,750.00**. If necessary, this order may be filed in the Small Claims Court and enforced 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: February 17, 2017

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Residential Tenancy Branch