



# 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      MNDCL-S, MNDL-S, MNRL-S, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on March 16, 2018, wherein the Landlord sought monetary compensation from the Tenants for unpaid rent and damage to the rental unit; authority to retain the Tenant's security deposit and recovery of the filing fee.

Only the Landlord's Property Manager, S.S., called into the hearing. She gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenants did not call into this hearing, although I left the teleconference hearing connection open until 2:04 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord's Agent and I were the only ones who had called into this teleconference.

As the Tenants did not call in, I considered service of the Landlord's hearing package. S.S. testified that they served the Tenants with the Notice of Hearing and the Application on March 23, 2018 by registered mail. A copy of the registered mail tracking number for each package is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenants were duly served as of March 28, 2018 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants for unpaid rent and damage to the rental unit?
2. Is the Landlord entitled to retain the Tenants' security deposit?
3. Should the Landlord recover the filing fee?

#### Background and Evidence

S.S. testified that this tenancy began on September 1, 2014. Copies of the residential tenancy agreements signed by the parties were also provided in evidence. S.S. confirmed that the monthly rent at the time the tenancy ended was \$875.00 per month with a \$125.00 "flat rate" charge for hydro and water for a total of \$1,000.00 per month.

S.S. confirmed that the Tenants also paid a security deposit in the amount of \$425.00 and a pet damage deposit in the amount of \$100.00.

S.S. testified that when she showed up on September 30, 2018 to do the move out inspection the Tenants had not yet moved their items from the rental unit, including their fish. She also stated that they appeared to have made no effort whatsoever to clean. Photos submitted by the Landlord showed the rental unit as being full of items at the end of the tenancy as well as being unclean. S.S. stated that she called the Tenants and asked why they had not moved out their items to which they responded that they were not able to hire movers.

S.S. testified that she then hired cleaners to come and pack and clean the rental unit. She assisted the cleaners and worked throughout the night into the early hours of the next day as new renters were supposed to be moving into the rental unit the same day. S.S. confirmed they had to pay for the new renters to stay in a BnB as the rental unit was not available.

S.S. also testified that the Landlord also rented a moving vehicle and loaded all of the Tenants' possessions in the rental truck and moved them to the Tenants' new rental unit. Introduced in evidence by the Landlord was a copy of the receipts for these expenses.

S.S. confirmed that the \$292.75 claimed for junk removal was paid for by the Landlord in July of 2016 (during the tenancy) as the Tenants did not have a clear path outside which created a safety hazard. She stated that the Tenants were supposed to pay this amount in exchange for being able to stay in the rental unit (as their tenancy was in jeopardy at the time) and despite this agreement they failed to pay. A copy of this receipt was also provided in evidence.

In terms of outstanding rent, the Landlord submitted a tenant ledger which confirmed that \$100.00 was owed for August 2018 and \$1,000.00 for September for a total of \$1,100.00.

A Monetary Orders worksheet was also filed in evidence by the Landlord and which confirmed that the Landlord claimed the following:

Cleaning of the rental unit	\$1,063.13
Hauling and moving of Tenants' belongings including rental of the moving truck	\$1,238.31
Junk removal	\$292.75
Outstanding rent	\$1,100.00
<b>TOTAL CLAIMED</b>	<b>\$3,694.19</b>

### Analysis

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

**37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

After consideration of the undisputed testimony and evidence before me and on a balance of probabilities I find as follows.

I accept the Landlord's evidence that the Tenants failed to pay rent as required and I award the Landlord the **\$1,000.00** claimed.

I also accept the Landlord's evidence with respect to the condition of the rental unit at the end of the tenancy and I find the Tenants failed to clear the rental unit of their personal possessions and clean the rental unit as required by the *Residential Tenancy Act*. The photos submitted by the Landlord indicate the Tenants made little or no effort to remove their items or clean the rental unit. I am satisfied the Landlord mitigated their losses by assisting the cleaners, and moving the Tenants' items to their new rental unit. I therefore award the Landlord the amounts claimed for clearing the Tenants' belongings, hiring cleaners and renting the moving vehicle to transport the Tenants' items.

I also find the Landlord is entitled to recover the cost of cleaning the rental unit in 2016. I accept the Landlord's agent's testimony that the tenancy was in jeopardy at that time due to the condition of the rental unit and the Tenants were given the opportunity to continue with their tenancy provided that they pay this cost.

Having been successful in their application I also find the Landlord is entitled to recover the filing fee.

### Conclusion

The Landlord is entitled to the sum of **\$3,794.19** calculated as follows:

Cleaning of the rental unit	\$1,063.13
Hauling and moving of Tenants' belongings including rental of the moving truck	\$1,238.31
Junk removal	\$292.75
Outstanding rent	\$1,100.00
Filing fee	\$100.00
<b>TOTAL CLAIMED</b>	<b>\$3,794.19</b>

Pursuant to section 38 and 72 of the *Act*, I authorize the Landlord to retain the Tenants' \$425.00 security deposit and \$100.00 pet damage deposit towards the amount awarded and I grant the Landlord a Monetary Order in the amount of **\$3,269.19**. The Landlord

must serve the Monetary Order on the Tenants and may file and enforce it in the B.C. Provincial Court (Small Claims Division).

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: October 11, 2018

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Residential Tenancy Branch