



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      MNDCT, OLC, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant and the landlord's property manager (the "property manager") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agreed that the tenant personally served the landlord with his application for dispute resolution in person on October 10, 2019. I find that the landlord was served with the tenant's application for dispute resolution in accordance with section 89 of the *Act*.

### Preliminary Issue- Tenant's Claim for Libel and Slander

The tenant testified that \$5,000.00 of his monetary claim for damage and compensation is for damages for libel and slander allegedly committed by the landlord.

I find that I do not have jurisdiction under the *Residential Tenancy Act* to consider such claims which are civil in nature. The tenant's monetary claim for libel and slander are therefore dismissed for want of jurisdiction.

### Issues to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Is the tenant entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?
3. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in August of 2018 and is currently ongoing. Monthly rent in the amount of \$2,562.50 is payable on the first day of each month. A security deposit of \$1,250.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The tenancy agreement states that garbage and water are not included in the rent.

Both parties agree to the following facts. The subject rental property is a house with a lower suite, the tenant lives in the main portion of the house. When the tenant moved in, the lower suite was not rented out and the owner of the subject rental property occasionally stayed in the lower suite. The owner of the subject rental property stayed in the lower suite from July 11 to August 10, 2019.

The tenant testified that he and his family were out of the country from June 6, 2019 to July 29, 2019 and from August 1, 2019 to August 24, 2019. The tenant testified that he assumed that the owner of the subject rental property used the water and garbage services for the house and so should have to pay a portion of the water and garbage bills. The tenant entered into evidence a water bill from July 13- September 20, 2019 in the amount of \$160.60. The tenant is seeking the owner to pay \$140.00 of that bill for her water consumption. The tenant testified that \$140.00 is his estimate of what the landlord should pay but is not based on a particular calculation.

The property manager testified that the landlord agreed to pay the tenant the requested \$140.00 for her water consumption and sent the tenant a cheque in the amount of \$140.00. The tenant testified that he did not receive the cheque. The landlord agreed to have the original cheque cancelled and allow the tenant to deduct \$140.00 from rent owing. The tenant agreed.

The tenant entered into evidence a garbage/compost removal bill for the months of April to June 2019 in the amount of \$160.60 and is seeking the owner of the subject rental property to pay \$60.00 of that bill. The tenant testified that \$60.00 is his estimate of what the landlord should pay but is not based on a particular calculation.

The tenant entered into evidence a garbage/compost removal bill for the months of July to September 2019 in the amount of \$84.52 and is seeking the owner of the subject rental property to pay \$30.00 of that bill. The tenant testified that \$30.00 is his estimate of what the landlord should pay but is not based on a particular calculation.

The property manager testified that the owner of the subject rental property did not use the garbage/compost when she stayed at the subject rental property but instead delivered her garbage to a local disposal centre. The property manager testified that the garbage/compost service occurs whether or not the tenant is staying at the subject rental property, and as per the tenancy agreement, the tenant is responsible for paying these bills.

I asked the tenant what section of the *Act, Tenancy Agreement or Regulation* he is alleging the landlord breached. The tenant testified that the landlord breached his privacy by posting noise complaint notices on his door which his neighbours could read. The tenant testified that the notices were posted on his door while he was out of the country so they stayed up longer than they would have had he been in the country.

The tenant testified that the landlord normally communicated to him via e-mail and believed that the posting of the notices was done in an effort to cause him distress and to lower his public standing. The tenant testified that the noise complaints were fraudulent.

The property manager testified that the notices were posted on the tenant's door pursuant to the service directives of the Residential Tenancy Branch.

The property manager testified that the tenant did not provide notice that he would be

out of the country and the landlord had no way of knowing that the notices would be left up on the door for a long period of time. This testimony was not disputed by the tenant.

The property manager denied that the notices were posted on the tenant's door in an effort to make the lose face in the community.

### Analysis

#### Water Bill Settlement

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a partial resolution of their dispute.

Both parties agreed to the following final and binding settlement of the water bill issue currently under dispute:

1. The landlord agrees to allow the tenant to deduct \$140.00 on one occasion, from rent due to the landlord.

Both parties gave verbal affirmation at the hearing that they understood and agreed to the above term as legal, final and binding.

#### Monetary Claim

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I find that the tenant has not proved, on a balance of probabilities, that the owner of the subject rental property used the garbage/compost on the occasions that she stayed in the lower suite. The tenancy agreement states that the tenant is responsible for the cost of garbage collection. I find that the tenant is responsible for the full cost of the garbage/compost collection. The tenant's monetary claim is dismissed.

#### Order for the Landlord to Comply

Section 62(3) of the Act states that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

The tenant did not allege that the landlord breached the Act, Regulations or the tenancy agreement, but alleged that his privacy was breached.

Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy.

Section 88(g) of the Act states that all documents, other than those referred to in section 89 [*special rules for certain documents*] may be served by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord.

While e-mails are a convenient and effective method of communication, they are not a method of service permitted under section 88 of the Act. I find that the landlord was permitted to serve the tenant by posting the notices on the tenant's door, pursuant to section 88(g) of the Act. I find that serving the tenant in accordance with the Act, does not constitute a breach of section 28 of the Act. I therefore dismiss the tenant's claim for the landlord to comply with the Act, Regulation or Tenancy Agreement.

As the tenant's claims were all dismissed, aside from the one agreed settlement term, I find that the tenant is not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the Act.

#### Conclusion

The tenant is permitted to deduct \$140.00 on one occasion from rent due to the landlord.

The remainder of the tenant's application is dismissed without leave to reapply.

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: November 21, 2019

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Residential Tenancy Branch