



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, MNDC, FF

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The landlord's agent, MR ("landlord") and the two tenants attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that she was the senior property manager for the landlord company named in this application and that she had authority to represent it as an agent at this hearing.

At the outset of the hearing, the male tenant stated that he may have to disconnect from the hearing early because he had to work. The female tenant stated that she would also disconnect from the hearing when the male tenant did, as she did not want to deal with the landlord on her own. The landlord stated that the tenants were served with the landlord's Application in November 2014 and had ample time to arrange their work schedules prior to this hearing.

The male tenant indicated that he was considering making an adjournment request at this hearing. I advised both tenants that if they wanted to make an adjournment request that I would need evidence from them regarding why they were requesting an adjournment, as well as a response from the landlord either opposing or consenting to the request. I would then make a decision based on the Residential Tenancy Branch

Rules of Procedure, which outline different factors in considering an adjournment request. The male tenant then testified that he did not want to make an adjournment request. I cautioned both tenants that if they disconnected from the hearing, that it would continue in their absence and monetary orders could be made against them, particularly based on undisputed evidence. Both tenants confirmed that they wished to proceed with the hearing, that they did not want to make an adjournment request and that they understood the consequences of the hearing continuing without them. On the basis of the tenants' consent and their willingness to proceed, as well as the landlord's willingness to proceed with the hearing, I proceeded with the hearing. This hearing commenced at 1:00 p.m. and lasted approximately 55 minutes total. The tenants disconnected from the hearing at approximately 1:30 p.m. The hearing continued in the tenants' absence.

The tenants confirmed receipt of the landlord's application for dispute resolution hearing package ("Application"), which the landlord confirmed was sent on November 6, 2014 by way of registered mail. In accordance with sections 89 and 90 of the Act, I find that the tenants were duly served with the landlord's Application.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent, damage, and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' security and pet damage deposits in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this Application from the tenants?

Background and Evidence

The landlord testified that this tenancy began on July 1, 2013 and was for a fixed term ending on June 30, 2014, after which the tenants were required to vacate the rental unit. The tenants vacated the rental unit on June 14, 2014. Monthly rent in the amount of \$2,000.00 was payable on the first day of each month. A security deposit of \$1,000.00 and a pet damage deposit of \$250.00 (collectively "deposits") were paid by the tenants and the landlord continues to retain both deposits.

The landlord stated that a written forwarding address was not provided by the tenants when they vacated the rental unit, only a verbal address was provided. The landlord

indicated that she had to research where the tenants were living and found an address in October 2014. The landlord stated that she used this address when she filed the landlord's Application and that the tenants responded to the landlord's Application. The landlord stated that a move-in condition inspection and report were completed on June 28, 2013 and a move-out condition inspection and report were signed on June 24, 2014. In the move-out condition inspection report, the tenants indicated that they disagreed with the landlord's estimated deductions to their deposits. The landlord provided a copy of both reports for this hearing.

The landlord seeks a monetary order of \$4,751.43 plus \$50.00 for the filing fee. The tenants had already disconnected from the hearing at the time that the landlord began providing evidence regarding unpaid utilities, damages, cleaning and repairs in this rental unit. Therefore, the evidence provided by the landlord regarding the above was undisputed at this hearing.

The landlord stated that the tenants did not pay rent of \$2,000.00 for June 2014, as well as \$25.00 for the NSF fee and \$25.00 for the late fee for June 2014 rent. The landlord testified that the NSF and late fees are specifically outlined in clause 10 of the addendum to the tenancy agreement. The landlord also indicated the above amounts in the move-out condition inspection report under the "unpaid rent" section. The male tenant testified that the tenants agree that the landlord is entitled to only half a month's rent of \$1,000.00 for June 2014, because they only occupied the rental unit from June 1 to 14, 2014. Both tenants confirmed that the landlord forced them to leave the rental unit, rather than continuing their tenancy. The male tenant stated that the landlord verbally agreed to a long term tenancy with the tenants at the start of this tenancy and that they trusted the landlord that their fixed term tenancy would be extended past June 30, 2014. The tenants indicated that they did not read the provision in the tenancy agreement stating that they were required to vacate the rental unit at the end of the fixed term, despite the fact that they both initialled beside this provision. The tenants stated that when they received the landlord's letter, dated May 26, 2014, advising them that they had to vacate by June 30, 2014, that they were surprised. The tenants stated that they worked quickly to find a new home and when they found one, they were required to move in on June 15, 2014, and therefore, they had to leave the rental unit on June 14.

The landlord seeks \$117.98 for unpaid utilities for the period from May 28 until June 30, 2014. The landlord stated that the tenants were required to pay for hot water as part of their tenancy. The landlord noted that the tenancy agreement specifically indicates that hot water is not included as part of rent, clause 11 of the tenancy agreement indicates

that utilities excluded from rent are the responsibility of the tenants, and that clause 8 of the tenancy agreement addendum indicates that the tenants are responsible for all utility billings which must be paid on time. The landlord provided a hot water utilities bill, dated June 27, 2014, and a receipt for this amount. The landlord stated that a special water reading was done in order to bill only for the period until the tenancy ended.

The landlord seeks \$300.00 for wall repairs performed after the tenants vacated, due to the fact that the tenants mounted their television to the wall, failed to remove the plywood for the mounting and failed to repair the area after removal. The landlord indicated an estimate of \$250.00 in the move-out condition inspection report and stated "wall mount patch and paint remove." The landlord provided a coloured photograph of the area, showing a piece of plywood above the fireplace in the living room. The landlord provided an invoice and receipt for \$409.16 for this work, including labour, materials and taxes. The landlord stated that she was only claiming for the labour which totals \$300.00 for 7 hours of work by an apprentice, painter and journeyman carpenter.

The landlord seeks \$450.00 for cleaning the rental unit. The landlord indicated that the tenants did not sufficiently clean the rental unit before vacating. The landlord indicated that multiple areas of the rental unit were dirty and required cleaning on the move-out condition inspection report. The landlord provided an invoice for this amount, describing the work done and indicating that 15 hours of cleaning was completed at \$30.00 per hour. The landlord stated that an employee of the landlord company cleaned the rental unit. The landlord provided coloured photographs showing the condition of the rental unit.

The landlord seeks \$535.00 for shampooing and cleaning the carpets in the rental unit. The landlord indicated that the carpets were dirty and had stains after the tenants vacated and that the large rental unit house is fully carpeted except for the bathrooms and kitchen. The tenancy agreement addendum indicates at clause #2 that the carpets are to be professionally cleaned at the end of the tenancy. The landlord indicated that the carpets were dirty and required cleaning on the move-out condition inspection report, including the estimated amount of \$500.00 for "rest of carpets." The landlord provided an invoice for this amount, describing the work done. The landlord provided coloured photographs showing the carpets in the rental unit.

The landlord seeks \$188.21 for dry-cleaning the drapes in the rental unit. The landlord confirmed that she inadvertently indicated an incorrect amount of \$118.21 in the landlord's Application evidence. The landlord indicated that at the time that the tenants vacated, they took the drapes with them and this was noted on the move-out condition inspection report. The landlord stated that when the drapes were returned by the

tenants, they were not dry-cleaned, as required by clause 2 of the tenancy agreement addendum. The landlord provided a paid invoice and receipt for this amount, describing the work done.

The landlord seeks \$264.60 for lawn and garden maintenance. The landlord stated that the tenants signed a "lawn and garden maintenance" agreement which forms part of the tenancy agreement. This landlord provided a copy of this agreement. The agreement indicates that minimum maintenance, including mowing the lawn and weeding had to be done, and that if the lawn and garden care did not meet the landlord's expectations, that the landlord would contract a landscaping company to complete the work at the tenants' cost. The landlord indicated "not weeded or mowed" and an estimate of \$250.00 for "lawn care" in the move-out condition inspection report. The landlord provided coloured photographs showing some of the lawn areas. The landlord provided a paid invoice for this amount, describing the work done.

The landlord seeks \$394.54 for the cleaning, hauling and disposal of items left behind by the tenants after they vacated the rental unit. The landlord provided coloured photographs of the items left behind by the tenants. The landlord indicated an estimate of \$200.00 for hauling two televisions and "random stuff in house" on the move-out condition inspection report and in a different area of the report, indicated "250 hauling." The landlord provided a paid invoice for this amount, describing the work completed.

The landlord seeks \$451.10 for the repair of the refrigerator in the rental unit. The landlord stated that the tenants broke the crisper drawers, one of the drawers was missing and the refrigerator handle was missing. The tenants stated that the landlord should have purchased a new refrigerator rather than repairing it for such a high price. The landlord stated that the refrigerator was not very old, so a new one would not be required at this time. The landlord also noted that a new refrigerator would be much more costly than the above repair amount. The landlord provided coloured photographs of the refrigerator, including the broken crisper drawers and the broken handle. The landlord indicated that the handle and drawers were missing on the move-out condition inspection report. The landlord provided a paid invoice for this amount, describing the work completed.

Analysis

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or the tenancy agreement, must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on the landlord claiming compensation for damage or loss resulting from

the tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that damage or loss.

The tenants vacated the rental premises on June 14, 2014, prior to the June 30, 2014 fixed term date specified in the tenancy agreement and contrary to section 45(2)(b) of the *Act*. The tenants are not permitted to end the tenancy earlier than the fixed term date and if they do, they may be liable for rental losses suffered by the landlord. Further, the tenants did not provide any written notice of their intention to vacate the rental unit early. As such, the landlord is entitled to compensation for the losses it incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenants did not pay any rent for June 2014. Although the tenants left the rental unit early on June 14, 2014, they were still subject to the fixed term tenancy agreement provisions. The agreement indicated that rent was due on the first day of each month. This means that the full rent of \$2,000.00 was due on June 1, 2014. Although the landlord is required to minimize its losses, the landlord did not receive at least one month's written notice that the tenants were vacating the rental unit early, in order to prepare the unit for re-rental earlier than June 30, 2014. Accordingly, I find that the landlord is entitled to the full month of rent for June 2014, totalling \$2,000.00.

I also find that the landlord is also entitled to an NSF fee of \$25.00 and a late fee of \$25.00, totalling \$50.00, for the unpaid June 2014 rent. The landlord stated that the landlord's bank charged approximately \$40.00 to the landlord for the NSF fee but the landlord was only charging the tenants \$25.00. I award the landlord \$25.00 for the NSF fee in accordance with section 7(1)(c) of the *Regulation*. I also award the landlord \$25.00 for an administration fee for this NSF cheque, in accordance with sections 7(1)(d) and 7(2) of the *Regulation*, as it was provided for in the tenancy agreement. Clause 10 of the tenancy agreement makes reference to both fees.

I find that the landlord provided undisputed evidence that the tenants failed to pay for hot water utilities from May 28 until June 30, 2014. The tenants signed a tenancy agreement and addendum indicating that they were responsible to pay for hot water utilities. The landlord seeks \$117.98 for these utilities. The landlord provided a utilities bill for this amount for the above time period. Accordingly, I find that the landlord is entitled to \$117.98 for the cost of utilities from the tenants.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant must then provide proof that section 7(2) of the *Act* was followed in taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenants caused damage, cleaning and repair costs in the rental unit and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I find that the landlord is not entitled to \$300.00 for wall repairs in the rental unit. The landlord's invoice does not describe any of the work that was performed for this wall repair, indicating only the amount of labour and materials being charged by three general types of trade professionals. I find that the photograph of the plywood above the fireplace does not demonstrate that the tenants mounted a television in that area and that this plywood had to be removed and the area repaired, as no photographs were taken after this work was done. Accordingly, I dismiss the landlord's claim for \$300.00 for wall repairs, without leave to reapply.

I find that the landlord provided undisputed evidence that the tenants failed to sufficiently clean the rental unit when they vacated. The landlord provided photographs showing the dirty state of the rental unit. The tenants are required to keep the rental unit in a state of "reasonable health, cleanliness, and sanitary standards," as per section 32(2) of the *Act*. The tenants can be found to be responsible for cleaning costs at the end of the tenancy, where the rental unit is left in a condition that does not comply with these standards, as per Residential Tenancy Policy Guideline 1. The landlord seeks a cleaning fee of \$450.00. I am satisfied that the landlord is entitled to a nominal award of \$160.00 total for cleaning, at a rate of \$20.00 per hour for a total of eight hours. I find that this is a reasonable amount for cleaning. I find that the hours and rate being charged by the landlord are high at \$30.00 per hour for cleaning of 15 hours. I find that the landlord's photographs do not demonstrate that such a large amount of cleaning was required.

I find that the landlord is entitled to a nominal award of \$50.00 for shampooing and cleaning the carpets in the rental unit. I find that this is a reasonable cost, compared to the high cost of \$535.00 charged by the landlord. I do not find that the landlord's

photographs demonstrate a large amount of stains and dirt in the carpets, beyond reasonable wear and tear, as was claimed by the landlord.

I find that the landlord is not entitled to \$188.21 for dry-cleaning the drapes. I find that the tenancy agreement requirement for the tenants to dry-clean the drapes is unreasonable. The landlord did not demonstrate why the drapes were required to be dry-cleaned and that it was beyond reasonable wear and tear. The landlord did not provide photographs of the drapes showing that they needed to be dry-cleaned. Accordingly, I dismiss the landlord's claim for \$188.21 for dry-cleaning the drapes, without leave to reapply.

I find that the landlord is not entitled to \$264.60 for lawn and garden maintenance. Although the tenants signed an agreement regarding minimum requirements for the lawn and garden, I find that the photographs provided by the landlord do not sufficiently demonstrate that the tenants did not meet these minimum requirements when they vacated. Accordingly, I dismiss the landlord's claim for \$264.60 for lawn and garden maintenance, without leave to reapply.

I find that the landlord is entitled to \$50.00 for the cleaning, hauling and disposal of items left behind by the tenants after they vacated the rental unit. The landlord provided coloured photographs of the items left behind, as well as references in the move-out condition inspection report and a paid invoice. I find that the above amount is a reasonable cost for this work, as compared to the \$394.54 amount claimed by the landlord.

I find that the landlord is entitled to \$100.00 for refrigerator repair. I am satisfied that some repairs were required as demonstrated by the coloured photographs provided by the landlord, as well as references in the move-out condition inspection report and a paid invoice. I find that this amount is a reasonable cost for this work, as compared to the \$451.10 amount claimed by the landlord.

As the landlord was mainly successful in this Application, I find that the landlord is entitled to recover the \$50.00 filing fee from the tenants.

The landlord continues to hold the tenants' security deposit of \$1,000.00 and pet damage deposit of \$250.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain both deposits, totalling \$1,250.00, in full satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,327.98 against the tenants as follows:

Item	Amount
Unpaid June 2014 Rent	\$2,000.00
June 2014 NSF and Late Fees	50.00
Unpaid Utilities	117.98
Cleaning	160.00
Shampooing and Cleaning Carpets	50.00
Cleaning, Hauling and Disposal of Items	50.00
Fridge Repair	100.00
Less Security and Pet Damage Deposits	-1,250.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Award	\$1,327.98

The landlord is provided with a monetary order in the amount of \$1,327.98 in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: July 20, 2015

Residential Tenancy Branch

