



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF, LRE, MND, MNSD, OPB

### Introduction

This hearing dealt with an application by the landlord seeking a monetary order, the recovery of the filing fee cost and an order to retain the security deposit in partial satisfaction of the claim. The tenant has filed an application seeking a monetary order for money owed or compensation for damage or loss suffered under the Act, regulation, or tenancy agreement, an order to recover the filing fee and the return of the security deposit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided **full opportunity** to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony, have witnesses give testimony and to make submissions during the hearing.

### Issues to be Decided

Is either party entitled to any of the above under the Act, regulation or tenancy agreement?

### Background and Evidence and Analysis

The relationship between these two parties is an acrimonious one. The two parties have been involved in numerous hearings and the hostility towards one another was apparent throughout the hearing.

Both parties provided extensive documentary evidence. All parties' testimonies and evidence have been considered in making a decision. All issues, evidence and arguments were considered but for the sake of clarity and brevity this decision will not

repeat each and every item, instead it will focus directly on the claims as made in each party's application.

The tenancy began on or about June 1, 2013 and ended on October 7, 2014. Rent in the amount of \$2100.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$1050.00. A condition inspection report was done at move out only.

As both parties have filed an application I will address them separately:

I will first deal with the landlords' application and my findings as follows:

**Landlords First Claim** – The landlord is seeking \$1428.35 for a damaged granite counter top. The tenant does not dispute this claim and has been making partial payments. The landlord concurred that was the case and that the amount claimed is the outstanding amount. Based on the tenants' acknowledgment I find that the landlord is entitled to \$1428.35.

**Landlords Second Claim** - The landlord is seeking \$160.00 for cleaning the suite. The landlord stated that he "signed off" on the move out condition inspection report but only if the tenant was to abide by an agreement that addressed two other units. The landlord stated that the tenant did not sign the move out condition report and that regardless that a move in condition inspection report wasn't done the tenant has a responsibility at returning the unit in a clean state.

The tenant disputes this claim. The tenant stated that the unit was clean and that the parties agreed to such. The landlord has not provided sufficient evidence to support this claim and I therefore dismiss this portion of the landlords' application.

**Landlords Third Claim-** The landlord is seeking \$546.00 to paint walls, trim, kitchen cabinets and bedroom ceiling. The landlord stated that he "assumed that they were painted before this tenant moved in or should have been".

The tenant stated that the unit had not been painted and that a move in condition report was not conducted. The tenant stated that the unit was in very similar condition at move out as it was at move in.

The landlord was unable to satisfy me of this claim as they had not conducted a move in condition inspection report or provide other supporting documentation to give a "snapshot" of how the unit was at move in versus move out. Based on the above I dismiss this portion the landlords' application.

**Landlords Fourth Claim** – The landlord is seeking \$50.00 for the replacement of a shower drain cover. The tenant stated that the drain was missing when he moved in and that he “just lived without one”.

Again, the landlord was unable to satisfy me of this claim as they had not conducted a move in condition inspection report or provide other supporting documentation to give a “snapshot” of how the unit was at move in versus move out. Based on the above I dismiss this portion the landlords’ application.

The landlord is entitled to the recovery of the \$ 50.00 filing fee.

I find that the landlord is entitled to a total of \$1478.35

I will now address the tenants’ application and my findings as follows:

**Tenants First Claim** – The tenant is seeking the return of double the security deposit. The tenant provided their forwarding address on October 7, 2014. The landlord filed for dispute resolution on October 15, 2014 seeking to retain the security deposit. As the landlord has filed within the legislated timeline the tenant is not entitled to seek the doubling provision of the Act and I therefore dismiss that request. I will address the security deposit at the conclusion of this decision.

**Tenants Second Claim** – The tenant is seeking a rental rebate of \$1625.81 for the time period of October 8, 2014- October 31, 2014. The tenant stated that the landlord had agreed to do so in an email and should be entitled to that amount.

The landlord disputed this claim. The landlord stated that negotiations were ongoing and that it was to address three units. The landlord stated that no signed agreement was ever made as the tenant continuously changed his mind and kept changing the terms. The landlord stated that the tenant left of his own accord without any promise of rental rebate. The tenant has failed to provide sufficient evidence such as a signed agreement that provides specific terms to support this claim; accordingly I dismiss this portion of his application.

**Tenants Third Claim** –The tenant is seeking \$595.00 for stress. The tenant stated that he had heard that the landlord was illegally entering suites and that caused him great concern due to the pending hearing. The tenant also stated the ongoing deactivation of fobs was causing additional stress.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The tenant must satisfy of all four of the above grounds, the tenant has not. The tenant has not provided sufficient evidence to support any of the four grounds and I therefore dismiss this portion of his application.

The tenant has not been successful for any part of their application and is not entitled to the recovery of the filing fee cost.

As for the monetary order, I find that the landlord has established a claim for \$1478.35. I order that the landlord retain the \$1050.00 deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$428.35. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The landlord is granted a monetary order for \$428.35. The landlord may retain the security deposit. The tenants' application is dismissed in its entirety.

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 18, 2014

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Residential Tenancy Branch

