



# 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      MND, MNR, MNSD, MNDC, FF (Landlord)  
                                 MNSD, FF (Tenants)

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) for a Monetary Order made by the Landlord and the Tenants.

The Landlord applied for damage to the rental unit, unpaid rent or utilities, for money owed or compensation for damage or loss under the *Residential Tenancy Act*, (the “Act”), to keep the Tenants’ security deposit and to recover the filing fee. The Tenants applied for the return of their security deposit and to recover their filing fee.

Two agents for the Landlord and the property manager appeared for the hearing and provided affirmed testimony as well as written evidence prior to the hearing. Both Tenants appeared for the hearing but the female Tenant left the hearing at the start of the hearing, assigning the male Tenant to act as her agent. The Tenant confirmed that they had not provided any written evidence prior to the hearing as they were relying on the Landlord’s written evidence.

The parties confirmed receipt of each other’s Applications and the Tenant confirmed receipt of the Landlord’s written evidence which I determined had been served in accordance with the Rules of Procedure.

### Preliminary Issues

The Tenant confirmed that he had provided the Landlord with a forwarding address in writing on July 7, 2014 after they had vacated the rental suite on May 31, 2014. The Landlord confirmed receipt of the Tenants’ address and made the Application to keep the Tenants’ security deposit on July 10, 2014. Therefore, I determined that the Landlord had made the Application to keep the Tenants’ security deposit within the time

limits stipulated by Section 38(1) of the Act. Therefore, there was no requirement for the Tenants to make their Application for the Landlord to return their security deposit as this would have been determined through the Landlord's Application.

### Background and Evidence

At the start of the hearing the parties confirmed that there had been two previous hearings relating to this tenancy for different issues.

The Landlord had applied for an Order of Possession and a Monetary Order for **unpaid rent** based on an **undisputed** notice to end tenancy for unpaid rent for April, 2014. This file was considered through the Direct Request process which involves a non-participatory hearing. As a result, on April, 23, 2014 the Arbitrator who had conduct of the non-participatory hearing determined that the Landlord was entitled to an Order of Possession effective for two days after service on the Tenants, and a Monetary Order for April, 2014 unpaid rent in the amount of \$1,193.00.

On May 21, 2014, another Arbitrator heard the Tenant's Application to cancel a notice to end tenancy for **cause** and for monetary compensation. The Arbitrator determined that the Tenants had already been served with the Order of Possession issued to the Landlords as a result of the hearing on April 23, 2014 and therefore, the notice to end tenancy for cause was a moot issue.

The Arbitrator also dismissed the Tenant's monetary compensation with leave to re-apply because no documentary evidence was provided to support the claim. The Arbitrator also noted that the parties both agreed that the Landlord served the Tenant with the Order of Possession and as a result the tenancy was effectively ended after the effective date of the Order of Possession; however the Tenants had not vacated the rental suite.

During this hearing, both parties provided oral testimony and made submissions to me. The Tenant testified that he had paid rent in the amount of \$1,193.00 to the Landlords on May 1, 2014 and therefore, this entitled him to stay in the rental suite until the end of May, 2014 as he had been issued with a receipt for use and occupancy only.

However, the Landlord's agent submitted that the Tenants' payment of rent on May 1, 2014 was applied to unpaid rent for April, 2014, for which they had already been issued an Order of Possession and this had been served onto the Tenants in April, 2014. The Tenant argued that he had paid rent for May, 2014 but that April, 2014 rent was still unpaid. The Landlord's agent disagreed and states that the Tenant paid rent on May 1,

2014 because that's when their rent was due, but this was applied to unpaid rent for April, 2014.

Nevertheless, I determined that the Tenant owed the Landlords unpaid rent in the amount of \$1,193.00 for which they had already been issued a Monetary Order dated April, 23.

In relation to the Landlord's claim for cleaning costs and over holding the tenancy for five days, again the parties provided conflicting evidence around the circumstances of when the Tenant's vacated the rental suite and whether a move out condition inspection report was completed in accordance with the Act. The Tenant referred to the extensive documentary evidence that he was in possession of to support his testimony. However, when the Tenant was asked why this had not been provided prior to the hearing and after receiving fact sheet instructions on submitting evidence, the Tenant stated that he did not bear the burden of proof.

However, I find that if a party seeks to rebut the evidence of an Applicant and they seek to rely on written evidence to support that, then they must provide a copy of this to the other party in advance of the hearing so the other party is able to consider the evidence and respond accordingly.

The Tenant also confirmed during the hearing, that he had not provided anything to the Landlord in writing that they were going to be vacating the rental suite at the end of May, 2014. Furthermore, the Tenants did not provide the Landlord with an address in writing where they could be contacted for the service of a notice regarding the scheduling of a move out inspection report. Both parties provided conflicting evidence of phone contact with each other regarding the scheduling of a condition inspection report.

If oral testimony results in one party's word against the others, then in the absence of supporting and corroborating evidence, the oral testimony alone may not be sufficient to make a determination. As a result, I offered the parties a chance to settle the matter between them and as it had been determined that the Tenant was in rental arrears, I encouraged the parties to agree on amount that would be payable to the Landlord with the offer of a payment plan to make the agreement more manageable for the Tenant.

#### Settlement Agreement

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 resolution of both Applications. Both parties agreed to settle **both** Applications **in full** as follows:

1. The Landlord will retain the Tenants' security deposit in the amount of **\$575.00**.
2. The Tenant agreed to pay the Landlord an additional \$738.00 in settlement of the Landlord's Application.
3. The Landlord agreed that the Tenant can pay this amount in the form of monthly payments of **\$50.00** each until the debt is fully satisfied.
4. The parties agreed that the first payment will be made by the end of January, 2015 in the amount of **\$50.00**.
5. The Tenant is to ensure that the monthly payments are to be **received** by the Landlord (not issued), by the end of each respective month.
6. The Landlord is issued with a Monetary Order in the amount of \$738.00, which can be enforced **if** the Tenants fail to make any of the payments in the manner agreed above. Copies of this order are attached with the Landlord's copy of this decision.
7. As a result, both parties agreed that the Monetary Order issued on April 23, 2014 is now of **no** effect because this amount has been dealt with accordingly through this hearing.
8. As a result, both parties are cautioned to keep detailed written records of any transactions that are made with regards to the above terms of the agreement.

This agreement is fully binding on the parties. Both files are now closed.

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: December 08, 2014

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Residential Tenancy Branch

