



# 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

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the 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, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1347 in order to enable the tenant to connect with this teleconference hearing scheduled for 1330. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The agent testified that the landlord served the tenant with the dispute resolution package on 7 August 2015 by registered mail. The agent provided me with a Canada Post tracking number. The agent testified mailing was sent to the tenant's forwarding address. On the basis of this evidence, I am satisfied that the tenants was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, for losses, and for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

The landlord and tenant entered into a tenancy agreement on 31 October 2014 for a tenancy beginning 1 November 2014. The tenancy agreement provided for monthly rent in the amount of \$1,175.00 that was due on the first. The tenancy agreement was for an initial fixed term of one year. The landlord continues to hold the tenant's security deposit in the amount of \$587.50, which was collected at the beginning of the tenancy.

The tenancy agreement includes an addendum that sets out that a \$25.00 administrative fee is payable where the tenant pays rent late.

The tenant signed a rent inducement agreement as a schedule to the tenancy agreement addendum. That agreement provided for a reduction of the first month's rent in the amount of \$575.00. The agreement also made the reduction contingent:

*In the even that this agreement is terminated prior to the Expiry lease date of Oct 31 2015, payment of the total amount of rebate provided totalling \$575.00 will be required back from the tenant...*

On 3 March 2015, the tenant provided notice to end the tenancy effective 31 March 2015.

The agent testified that the tenant paid \$575.00 towards March's rent on 5 March 2015. The agent testified that the tenant paid rent late for November 2014 and March 2015.

The agent testified that approximately two days after she received the tenant's notice, the landlord advertised the rental unit for rent in two different online classified sites as well as the landlord's own website. The rental unit was advertised as available for 15 April 2015 as the rental unit required some repairs. The agent testified that the landlord entered into a new tenancy on or about 1 May 2015.

The agent testified that the unit required cleaning and repainting. In particular, the tenant had failed to clean the kitchen and the unit had a bad odor, which the agent attributed to cooking. The agent testified that the rental unit took two hours to clean. The agent testified that the entire rental unit had to be repainted to remediate the bad odor. The agent testified that the rental unit was last repainted before the tenancy.

The landlord provided me with a receipt for paint supplies dated 7 April 2015 in the amount of \$61.25. The landlord provided me with a receipt for painting labour dated 17 April 2015 in the amount of \$183.75. The landlord provided me with a receipt for cleaning services dated 7 April 2015 in the amount of \$96.00.

The landlord claims for \$2,741.00:

Item	Amount
Unpaid March 2015 Rent	\$600.00
Late Fee November 2014	25.00
Late Fee March 2015	25.00
Rent Loss April 2015	1,175.00
Paint	61.25
Painting	183.75
Cleaning	96.00
Repayment of Rebate	575.00
<b>Total Monetary Order Sought</b>	<b>\$2,741.00</b>

### Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant occupied the rental unit until 31 March 2015. Accordingly, he was liable to the landlord for March's rent. The agent testified that the tenant only paid \$575.00 towards March's rent. I was not provided with any evidence that indicates that the tenant was entitled to deduct any amount from rent. I find, on a balance of probabilities, that the landlord has proven its entitlement to \$600.00 the balance of March's rent.

Paragraph 7(1)(d) of the *Residential Tenancy Regulations* (the Regulations) provides that a landlord may charge an administration fee of \$25.00 for late payment of rent. Pursuant to subsection 7(2) a late fee charge may only be applied if the tenancy agreement provides for that fee. The tenancy agreement provides for this fee at clause 1 of the addendum. I find that the landlord is entitled to charge the fee. I find that the tenant has paid rent late on two occasions. The landlord is entitled to recover \$25.00 per occasion.

I find that the landlord and tenant entered into a fixed term tenancy for the period 1 November 2014 to 31 October 2015.

Subsection 45(2) of the Act sets out how a tenant may end a fixed term tenancy:

A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

This means that a tenant cannot give notice to end the tenancy before the end of the fixed term. In this case, the tenant vacated the rental unit before the completion of the fixed term. The tenant has breached the Act and as a result the landlord experienced a loss of April's rent.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

The landlord advertised the rental unit as available and attempted to find tenants for mid-April. I find that the landlord has mitigated its losses. As such, I find that the landlord has proven its entitlement to \$1,175.00 for April's rent loss.

Subsection 32(2) of the Act requires a tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Caused means that the actions of the tenant or his visitor logically led to the damage of which the landlord complains.

*Residential Tenancy Policy Guideline*, 1. Landlord & Tenant – Responsibility for Residential Premises" (Guideline 1) sets out the tenant's responsibilities:

The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act*...

[footnote removed]

The agent has provided sworn and uncontested testimony that the rental unit required two hours of cleaning, in particular the kitchen and oven. I find, on a balance of probabilities that the tenant left the rental unit in a condition that did not comply with subsection 32(2) of the Act and Guideline 1. The landlord has proven its entitlement to its cleaning costs in the amount of \$96.00.

The landlord seeks the cost of repainting the rental unit. The agent has provided sworn and uncontested testimony that the tenant cooked in such a manner that caused damage to the rental unit by leaving a noticeable and unpleasant odor. I find, on a balance of probabilities, that the landlord has shown the tenant damaged the rental unit. I find that the landlord is entitled to recover the cost of repainting.

*Residential Tenancy Policy Guideline* "40. Useful Life of Building Elements" provides me with direction in determining damage to capital property. This guideline sets out that the useful life expectancy of interior paint is four years. The rental unit was last repainted five months before the tenancy ended. As such, the capital value of the interior paint had been reduced by 5/48. The landlord is entitled to recover 43/48 of the cost of repainting the rental unit.

The tenancy agreement included as schedule A to the addendum a rent inducement agreement. I find that this agreement forms part of the tenancy agreement. I find that by ending the tenancy early, the tenant lost his entitlement to the rent inducement and that the landlord is entitled to the full amount of November 2014's rent: \$575.00.

The landlord applied to keep the tenant's security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$2,177.98 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid March 2015 Rent	\$600.00
Late Fee November 2014	25.00
Late Fee March 2015	25.00
Rent Loss April 2015	1,175.00
Paint	54.87
Painting	164.61
Cleaning	96.00
Repayment of Rebate	575.00
Offset Security Deposit Amount	-587.50
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$2,177.98</b>

The landlord is provided with this order 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 subsection 9.1(1) of the Act.

Dated: September 17, 2015

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Residential Tenancy Branch

