



# 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      MNR, MND, MNDC, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord company and the tenant attended the hearing and each gave affirmed testimony. The parties each called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses.

During the course of the hearing the tenant stated that some of the evidentiary material provided by the landlord had not been received by the tenant prior to the commencement of the hearing. The landlord advised that the material was all sent to the tenant by registered mail, which was returned to the landlord marked "Unclaimed." The landlord has provided a copy of a Registered Domestic Customer Receipt addressed to the tenant and stamped by Canada Post with the date of March 3, 2016, and I am satisfied that the landlord has served the evidence in accordance with the *Residential Tenancy Act* and Rules of Procedure, and all evidence provided by the landlord is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?

- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for changing the locks to the rental unit?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The landlord's agent** testified that this fixed term tenancy began on February 1, 2012 and reverted to a month-to-month tenancy after the first 6 months. The tenant vacated the rental unit on November 23, 2015. Rent in the amount of \$922.00 per month was payable on the 1<sup>st</sup> day of each month having been increased from \$900.00 per month effective February 1, 2015, and a copy of the tenancy agreement has been provided. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$450.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment within a rental apartment complex.

On November 3, 2015 the landlord's agent gave the tenant a notice to end the tenancy for unpaid rent for the month of November. The tenant was also in arrears \$2.00 from October, 2015, and promised to pay, but didn't. The landlord's agent gave the tenant a 24 hour notice to inspect the rental unit, and while at the rental unit, the tenant said she was planning to move out on November 15. Then the tenant called the landlord's agent on November 15 saying she couldn't move out yet. Nothing was heard from the tenant, so the landlord again gave the tenant another 24 hour notice, and when the landlord's agent arrived at the rental unit on November 23, 2015 the tenant had moved out.

The landlord received the tenant's forwarding address in writing on November 26, 2015, but the tenant didn't leave the apartment key or the mail key.

The landlord claims \$728.13 for unpaid rent to November 23, 2015 and an additional \$2.00 for unpaid rent for the month of October, 2015.

A move-in condition inspection report was completed by the parties at the beginning of the tenancy, and the landlord's agent completed a move-out condition inspection report once discovering that the tenant had moved out. Both the move-in and move-out portions are on one report, a copy of which has been provided. The landlord's agent testified that at the end of the tenancy everything was dirty. Walls had to be washed before painting could be done, the cleaner hired by the landlord had to pressure wash the patio and all rooms required cleaning. The landlord claims \$384.00 for the cleaner and supplies, and an Invoice from the cleaner has been provided. It shows a \$200.00

charge for cleaning the apartment unit, \$120.00 for garbage removal and pressure washing, and \$64.00 for cleaning supplies.

The landlord also claims \$42.00 for replacing a door that had been broken by the tenant during the tenancy, and a copy of an invoice for that amount has been provided.

The landlord has also provided invoices for replacing the locks for the apartment and the mail box, and for the cost of installing them. The cost to install is \$52.50, and the landlord purchased locks in bulk. The invoices show \$28.44 for one lock, for which the landlord has claimed \$25.00. The other lock was \$39.98.

The tenant also left the rental unit with a broken shower rod, for which the landlord claims \$10.00, although no receipt has been provided. The landlord's agent testified that the landlord has some in stock.

The landlord also claims \$315.00 for painting the rental unit and the cost of paint, being \$74.12 for the walls and \$59.12 for the ceiling. The landlord's agent testified that the entire unit was freshly painted before the tenant moved into the rental unit, and the landlord had to re-paint the entire unit at the end of the tenancy. The kitchen ceiling had been damaged during the tenancy, and the landlord had it repaired and painted during the tenancy, and then had to do it again due to yellowing at the end of the tenancy. The tenant or the tenant's boyfriend smoked in the rental unit, and it had to be re-painted.

Photographs have also been provided.

**The landlord's witness** testified that she provided an invoice to the landlord for her cleaning services. The witness spent 5 hours cleaning the rental unit. From windows to floors and all in between and all appliances had to be cleaned.

When questioned about keys, the witness denied ever speaking to the tenant or telling the tenant that she couldn't accept the keys.

**The tenant** testified that neither she nor her boyfriend ever smoked inside the rental unit. A lot of tenants smoked in and around the rental complex.

The tenant further testified that she paid rent on November 1, 2015 in the amount of \$922.00 for the month of October, 2015, which the tenant acknowledges was late. On November 3, 2015 the landlord's agent told the tenant she would have to move out, but agreed that the 15<sup>th</sup> would be okay. The tenant found another rental unit but couldn't move in until the 17<sup>th</sup>, and the landlord's agent agreed to that. The tenant moved out as promised on November 17, 2015.

The tenant's mother and boyfriend did the cleaning, and never mentioned an issues or damages except the broken door, which the landlord knew about during the tenancy.

During the tenancy the kitchen ceiling had to be replaced and the landlord's agent told the tenant that she didn't have to paint that because the landlord was going to do it anyway.

After the tenant moved out, the tenant went to the landlord's office to return the keys and spoke to the cleaning lady. The cleaning lady said that the tenant would have to wait for the landlord's agent to return. The tenant emailed the property manager about a week later about the security deposit, who replied telling the tenant to provide a forwarding address and a cheque would be sent. A week later the tenant received the landlord's application for dispute resolution.

**The tenant's witness** testified that she is the tenant's mother and assisted with moving out of the rental unit on November 17, 2015 and has a receipt for the U-haul, although a copy has not been provided. The tenant was told to move out several times and the soonest was that day.

Once the furniture was moved out she swept the floors but didn't get a chance to wash them. The floors are laminate so didn't require vacuuming. The witness washed walls where it appeared they needed washing, cleaned the toilet and the tub, and cleaned out the cupboards. She also swept the patio, but the tenants above kept dropping cigarette butts on it. There were always cigarette butts on it during the tenancy each time the witness visited, and the landlord was told about it. The kids in the rental unit above also kept throwing toys onto the tenant's patio. The patio was clean when she left, and the witness denies that any garbage was left on it.

She or her daughter tried to give the keys to a cleaner, but they weren't accepted. The witness went back to the rental complex on November 18, 2015 and there were cigarette butts on the patio again. She tried to find the landlord to give the keys to and attended in the morning and again in the afternoon but no one was there. There is no mail slot or other place to leave the keys. The keys were needed to lock the rental unit, so she had no one to give them to after locking up.

### Analysis

Firstly, with respect to the landlord's claim for unpaid rent, the parties agree that the landlord gave the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on November 3, 2015. The tenant was able to negotiate a move-out date with the landlord's agent for either the 15<sup>th</sup> or 17<sup>th</sup> of November. The tenant and the tenant's

witness both testified that the tenant moved out on November 17, 2015, however the landlord's agent testified that she didn't know the tenant had moved out until November 23, 2015. The landlord claims unpaid rent to the date the tenant moved out.

Regardless of what date in November the tenant actually vacated, the landlord is entitled to the rent, and I find that the landlord's claim for a portion in the amount of \$728.13 is reasonable. I also accept the landlord's testimony that the tenant was in arrears \$2.00 for a previous month.

Where a party makes a monetary claim against another for damages, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate such damage or loss.

A landlord is also required, unless the tenant abandons a rental unit, to ensure that the tenant is provided with at least 2 opportunities to schedule the inspection report. In this case, the parties disagree as to when the tenant moved out, and I accept the landlord's testimony that she didn't know the tenant had moved, and therefore believed the tenant had abandoned the rental unit. The tenant testified that the landlord allowed the tenant until November 17 to move out. Obviously, there is some error in communication.

I have reviewed the move-in/out condition inspection reports as well as the photographs provided by the landlord, and considering the testimony of the tenant's witness, I accept that although the tenant's mother did some cleaning, the rental unit was not left reasonably clean, and the landlord has established the claim of \$384.00.

The tenant does not dispute the broken door, and I find that the landlord has established a claim for \$42.00.

With respect to the keys, there is no doubt that the landlord didn't receive them, but the tenant and the tenant's witness testified that they attempted to return them but couldn't reach the landlord's agent and the cleaner didn't want to accept them. I am not satisfied that that is a defence to failing to return the keys, and I find that the landlord has established the claims of \$52.50 for labour, \$28.44 and \$39.98 for the locks.

I also find that the \$10.00 claim for the broken shower rod is reasonable and is noted on the move-out condition inspection report, and I allow that claim.

With respect to painting, the landlord's agent testified that the rental unit was freshly painted before the tenant moved in on February 12, 2012. The tenancy lasted almost 4 years, ending near the end of November, 2015. The Residential Tenancy Branch Policy Guidelines (#40) sets the useful life of building elements as a guide, which sets the useful life of interior paint at 4 years. Therefore, I find that the landlord has not established that the tenant should be responsible for painting and that portion of the landlord's application is dismissed.

In summary, I find that the landlord has established the \$730.13 claim for unpaid rent, \$384.00 for cleaning, \$42.00 for the broken door, \$120.92 for changing locks (\$52.50 for labour, \$28.44 and \$39.98 for the cost of the locks), and \$10.00 for the broken shower rod, for a total of \$1,285.05. The landlord currently holds a \$450.00 security deposit which I order the landlord to keep in partial satisfaction of the claim. Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$50.00 filing fee. I hereby grant a monetary order in favour of the landlord for the difference in the amount of \$887.05.

### Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$450.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$887.05.

This order is final and binding and may be enforced.

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: March 31, 2016

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Residential Tenancy Branch