



# 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 MNDC MNR MNSD FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for a monetary order for unpaid rent, damage or loss pursuant to section 67; authorization to retain all or a portion of the tenants' security deposit 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 tenants did not attend this hearing, although I waited until 1:45 pm in order to enable the tenants to connect with this teleconference hearing scheduled for 1:30 pm. The landlord's representative ("the landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The landlord testified and provided supporting documentary evidence that tenants were both individually served with copies of the landlord's Application for Dispute Resolution hearing package ("ADR") by registered mail on October 9, 2015. The landlord testified that the ADR was sent to the forwarding address provided by the tenants at move-out. The landlord testified that, out of an abundance of caution, the ADR was resent by registered mail on March 14, 2016 to ensure the tenants were made aware of the hearing. The landlord submitted copies of receipts for both mailings as well as tracking information. Based on the sworn undisputed testimony of the landlord, and the supporting documentary evidence, I find that the tenants were both deemed served with the landlord's ADR with Notice of Hearing on October 14, 2015 in accordance with section 89 and 90 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, damage or loss as a result of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security and pet damage deposit towards any monetary award? Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

The landlord testified that this tenancy began on July 1, 2013. She submitted a copy of the residential tenancy agreement as evidence at this hearing. The landlord testified that, after providing notice to end tenancy on August 29, 2015, the tenants vacated the rental unit as of September 30, 2015. The landlord applied on October 7, 2015 to retain all or a portion of the tenant's security and pet damage deposit. As of the date of this hearing, the landlord continues to retain a \$525.00 security deposit paid by the tenants at the outset of this tenancy (May 26, 2013) as well as a \$525.00 pet damage deposit paid by the tenants at the outset of this tenancy (July 1, 2013). The landlord sought a monetary award of \$2382.80 for unpaid rent and damage to the rental unit at the end of the tenancy.

The landlord submitted photographs showing; stained and dirty walls; appliances left unclean (dishwasher, refrigerator and stove); a dirty washroom and toilet; as well as dirty carpets and items left behind in the rental unit. The landlord provided sworn undisputed testimony that the tenants left behind a table on the balcony as well as a side table and a variety of chairs inside the rental unit. The landlord also testified that a close door within the rental unit was broken and unusable.

The landlord testified that the rental apartment building is approximately 35 years old and she submitted a copy of the condition inspection report for move-in and move-out. The move-in report indicates that the rental unit was in clean condition with nothing marked as dirty or broken. The move-out report indicates that the keys were not returned at the end of the tenancy; that the closet door was broken; that there was garbage on the floors; that the oven was very dirty; and that furniture was left behind. Based on this inspection, the landlord sent a "security deposit refund" form to the tenant indicating that the landlord intended to seek to retain the security deposit towards the repairs and cleaning.

The landlord submitted a ledger of the rental payments for this rental unit. It showed that a balance of \$526.00 remained outstanding for the month of August 2015 and that September 2015 rent in the amount of \$1076.00 remained unpaid. The landlord referred to the residential tenancy agreement that allows for a \$50.00 late payment of rent fee.

Therefore, the landlord sought a total of \$1702.00 for unpaid rent and late fees (\$1602.00 rental arrears and \$100.00 late payment fees).

The landlord submitted receipts with respect to the following expenditures at the end of this tenancy;

- Carpet cleaning \$99.75
- Rental unit cleaning \$192.00
- Painting \$224.25
- Closet door repair \$44.80
- Furniture removal \$100.00

The landlord was unable to indicate when the rental unit was last painted. She submitted that the tenants resided in the rental unit for two years, had a pet and referred to the photographs showing stains, dirt and other damage on the walls. She submitted that, based on all of the evidence she submitted, the tenants should be responsible for the entire cost of painting the rental unit.

### Analysis

I find that the landlord is entitled to receive an order for unpaid rent in the amount of \$1602.00. The landlord has provided sufficient evidence, in the form of the accounting rent ledger for this unit to show that the tenants have not paid rent in full for the month of August 2015 and that the tenants did not pay the full rental amount of \$1076.00 for the month of September 2015. I accept this uncontested evidence offered by the landlord with respect to the rental arrears totalling \$1602.00.

The landlord also applied for \$100.00 in fees for late payment of rent for August and September 2015. She provided copies of the written tenancy agreement which established this late payment fee. However, Residential Tenancy Regulation 7 provides that,

### **Non-refundable fees charged by landlord**

7 (1) A landlord may charge any of the following non-refundable fees:

...(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent...

I find that the landlord is entitled to a \$25.00 late fee for the month of August and a \$25.00 late fee for the month of September for a total in late rent fees of \$50.00.

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 the responsible party pay compensation to the claimant. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss ("the claimant") bears the burden of proof. The claimant (in this case the landlord) must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

With respect to the claim of damage, the landlord has provided a copy of a condition inspection report and the security deposit refund form that were sent to the tenants. The landlord has also submitted photographic evidence that clearly show the need for carpet cleaning, painting, furniture removal and cleaning within the rental unit at the end of the tenancy. The landlord has provided undisputed sworn testimony as well as documentation in the form of an invoice for the need to repair the closet door. I find that the landlord has provided sufficient evidence to support her claim for damage.

The landlord has provided receipts and invoices that prove the costs to the landlord totalling \$660.80. Based on the photograph evidence and receipts provided by the landlord, I find that the landlord is entitled to recover the cost of carpet cleaning and cleaning of the rental unit as well as closet door repair and furniture removal in full. I find that these costs are reasonable in the circumstances and are proven to be the responsibility of the tenants. However, I do not find that the landlord is entitled to recover the full cost of painting the rental unit.

The landlord was not able to provide evidence with respect to the last time the rental unit had been painted. Residential Tenancy Policy Guidelines with respect to the useful life of residential tenancy properties suggest a four year lifetime for painting. Therefore, the landlord would have been obliged to paint the rental unit within 2 years of the end of this tenancy if the rental unit had been painted immediately before the tenancy. The landlord had no evidence to suggest that the unit was freshly painted at the outset of this tenancy. Therefore, the landlord cannot prove the need to paint is entirely the result of the tenants. However, the landlord did provide evidence that the walls were particularly dirty and stained at the end of this tenancy and that the condition of the walls at the end of the tenancy went beyond reasonable wear and tear. Therefore, I find the landlord is entitled to half her painting costs, totalling \$112.25.

Based on the undisputed evidence provided by the landlord in both her testimony and the documentary evidence, I find that the landlord is entitled to a monetary order as follows,

| Item   | Amount           |
|--|------------------|
| Unpaid Rent: August (526.00) and September (1076.00) 2015  | \$1602.00        |
| Late Fees: August and September 2015 (\$25.00 x 2)         | 50.00            |
| Carpet Cleaning  | 99.75            |
| Cleaning of Rental Unit                                    | 192.00           |
| Painting   | 112.25           |
| Closet Door Repair   | 44.80            |
| Furniture removal  | 100.00           |
| Less Security (\$525.00) and Pet Damage (\$525.00) Deposit | -1050.00         |
| Recovery of Filing Fee for this Application                | 50.00            |
| <b>Total Monetary Order</b>                                | <b>\$1200.80</b> |

### Conclusion

I allow the landlord to retain the tenants' security and pet damage deposit.

I issue a monetary order in the amount of \$1200.80 in favour of the landlord.

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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 25, 2016

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Residential Tenancy Branch

