



# 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

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The landlord applied for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, to keep all or part of the tenant's security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant and an agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party. I have reviewed all evidence before me that was presented during the hearing and that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither party raised any concerns regarding the service of documentary evidence.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the landlord entitled to retain any portion of the tenant's security deposit under the *Act*?

### Background and Evidence

The parties agreed that a written tenancy agreement was created between the parties but was not submitted in evidence. The parties agreed that a fixed term tenancy began on June 1, 2014 and reverted to a month to month tenancy after June 1, 2015.

Originally monthly rent in the amount of \$2,275.00 was due on the first day of each month and increased during the tenancy to the final amount of \$2,400.00 per month. The parties agreed that the tenant vacated the rental unit on November 30, 2015. The parties agreed that all but \$135.00 of the tenant's \$1,137.50 security deposit has been returned to the tenant. The landlord has claimed \$135.00 for the cost of painting and supplies.

The agent testified that it is the policy of the landlord to charge \$135.00 for painting and supplies for all tenancies that ends within a two year period. The agent submitted a copy of a condition inspection report which shows that the outgoing condition inspection portion was not completed in full and indicated that the tenant did not agree to the charges totaling \$135.00 listed on the outgoing condition inspection report.

The agent stated that he didn't consider the condition of the rental unit to be "damage" and was unsure of the age of the interior paint at the start of the tenancy in June 2014. The tenant did not agree with the charges and felt that the policy of charging tenants \$135.00 was unfair and did not comply with the *Act*. The agent submitted a copy of an invoice in the amount of \$100.00 and described the work required as a few holes where the tenant had pictures on the wall. There was no photographic evidence submitted of the number of holes; however, the agent did not dispute that there were only a few to be filled.

### Analysis

Based on the documentary evidence, the testimony of both parties, and on the balance of probabilities, I find the following.

#### *Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I will first deal with the policy the agent referred to during the hearing. I find that such a blanket policy of charging tenants \$135.00 for tenancies that end within a two year period to be inconsistent with the *Act* and Residential Tenancy Branch Policy Guidelines (the "Policy Guideline"). Therefore, the landlord is **cautioned they should cease this practice immediately.**

Secondly, I find the landlord failed to complete the condition inspection report in accordance with the Regulations and as a result, the landlord has breached section 35 of the *Act*. The landlord is **cautioned** to ensure that condition inspection reports are completed in full in the future.

Thirdly, I find the landlord has failed to meet the test for damages or loss under the *Act* for two reasons. The first reason is the invoice submitted does not match the amount being claimed while the second reason relates to section 37 of the *Act* which applies and states:

#### **Leaving the rental unit at the end of a tenancy**

**37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) **When a tenant vacates a rental unit, the tenant must**

(a) **leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and**

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[my emphasis added]

Policy Guideline 1 indicates that most tenants will put up pictures in the rental unit. As a result, I find the landlord has failed to prove that the tenant had excessive nail holes in the rental unit which is supported by the agent's testimony which indicated a "few nail holes". Therefore, I consider the few nail holes to be reasonable wear and tear which is permitted under section 37 of the *Act* and is to be expected as part of any tenancy.

Given the above, I **dismiss** the landlord's claim in full **without leave to reapply** due to insufficient evidence.

Pursuant to section 67 of the *Act*, I grant the tenant a monetary order in the amount of **\$135.00** for the remainder of the tenant's security deposit to which I find the landlord is not entitled to retain.

### Conclusion

The landlord's claim fails.

The tenant has been granted monetary order pursuant to section 67 of the *Act* in the amount of \$135.00 as indicated above. Should the landlord failed to pay this amount this order may be enforced by first serving it on the landlord. The tenant may then file it in the Provincial Court (Small Claims) to be enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: July 6, 2016

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Residential Tenancy Branch