



# 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, MNSD, MNDC, FF

### Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*).

The landlord named both co-tenants in their application where they applied for:

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order 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; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The co-tenant, MM made an application for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant, MM (the "tenant") confirmed he represented both named co-tenants. The corporate landlord was represented by two agents, AT, the on-site manager and EM, the property manager, (collectively "the landlord") who both confirmed they had authority to represent the corporate landlord.

As both parties were in attendance I confirmed that there were no issues with service of either party's application for dispute resolution or their respective evidentiary materials.

The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the Act, I find that the parties were duly served with copies of one another's applications and their respective evidence.

During the hearing the tenant requested to amend the amount of the monetary claim sought in the application. The tenant was initially seeking an amount of \$4,067.90. In the course of the hearing the tenant realized there was a calculation error and the total amount actually being sought is \$2,772.92, the sum of the security deposit of \$475.00, interest to the date of the hearing of \$812.92, and the equivalent of one month's rent of \$1,485.00. Pursuant to section 64(3)(c) of the Act and Rule 4.2 of the Rules of Procedure, I amend the tenant's Application to decrease the tenant's monetary claim from \$4,067.90 to \$2,772.92.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage and loss arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Is the tenant entitled to a monetary award as claimed?

#### Background and Evidence

The parties agreed on the following facts. This tenancy originally began on September 1, 1982. The tenants are the original occupants of the rental unit. At an earlier hearing, under the file number on the first page, the parties agreed that the tenancy would end on December 31, 2016. The parties subsequently extended the tenancy an additional month and the tenancy ended on January 31, 2017.

The tenant paid a security deposit of \$475.00 at the start of the tenancy. The total interest accrued on the security deposit is calculated to be \$812.92 as of the date of the hearing, April 25, 2017. The landlord continues to hold the deposit and interest. The parties prepared a condition inspection report at both the start and end of the tenancy. Both parties submitted a copy of the condition inspection report into written evidence. In the report, the landlord claims that the rental unit required considerable cleaning and repairs and is seeking to retain an amount of \$935.00 from the deposit and interest. The tenant disagrees that the report fairly represents the condition of the rental unit and disputes the landlord's monetary claim.

The landlord claims the following:

Item	Amount
4 hours Cleaning and Supplies	\$180.00
Repairs to Unit Doors	\$360.00
Fireplace and Chimney Cleaning	\$45.00
Junk Removal	\$100.00
Floor Repair	\$250.00
<b>TOTAL</b>	<b>\$935.00</b>

The landlord testified that the damage to the rental unit was in excess of the wear expected after a long term tenancy. The landlord specifically cited the need to replace the interior doors and closet doors of the rental unit, and the need to replace the flooring underlay. The landlord entered into written evidence copies of invoices and estimates for the work that was undertaken.

The tenant is seeking a return of the full amount of the security deposit and interest. The tenant testified that he cleaned portions of the rental unit and the amount claimed by the landlord is excessive. The tenant testified that there was no more damage to the rental unit than the usual wear expected after a long-term tenancy. The tenant also testified that some of the damage occurred as a result of earlier incidents during the tenancy. The tenant testified that the damage to the rental unit doors was not caused by the tenant. The tenant also said that the fireplace of the rental unit was cleaned approximately four years ago and there is no need for additional cleaning. The tenant disputes the landlord's testimony that the flooring needed replacement. The tenant agrees that there was some garbage left in the rental unit that needed to be removed by the landlord.

The tenant is seeking a return of the rent paid for the month of January, 2017. The tenant testified that he was advised that he was entitled to withhold the amount of the last month's rent when a landlord issues a notice to end the tenancy. The tenant testified that he paid the full monthly rent for January, 2017 and is now seeking a return of the rent paid.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. In the present application the landlord filed their application to retain the

security deposit on February 8, 2017, within the 15 days provided under section 38(1)(c) of the *Act*.

I find that the parties participated in a condition inspection report both at the start and end of the tenancy and neither party has relinquished their right to claim against the security deposit pursuant to sections 24 and 36 of the *Act*.

Section 67 of the *Act* allows me to issue a monetary award for damage or loss. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Policy Guideline 40 provides a general guide for determining the useful life of building elements. The Guideline states that an arbitrator “may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant’s responsibility for the cost or replacement”. In the present case, because of the length of this tenancy all of the building elements have exceeded the expected useful life. The parties have testified that the building elements were not replaced throughout the tenancy. Because of this, I find that the tenant is only responsible for the damage or loss to the rental unit in excess of the expected wear and tear.

I accept the party’s testimonies that garbage, clutter and debris was left in the rental unit after the tenant had move out. I accept the landlord’s testimony that cleaning the rental unit and removing junk cost \$280.00.

I find that the landlord has not shown, on a balance of probabilities, that the repairs to the rental unit arose from the tenant’s actions or negligence. I accept the landlord’s testimony that the underlay beneath the carpets and flooring needed to be replaced because of the odors that had seeped into them through the course of the tenancy. The landlord testified that the replacement was necessitated by the presence of the tenant’s pets in the rental unit over the years. However, I find that after over 3 decades of use, carpets, flooring and the lumber underneath them would require replacement in any event. I find that the landlord has not shown that the replacement was necessitated by the tenant’s actions. I dismiss this portion of the landlord’s claim.

The landlord testified that several interior doors were damaged or missing from the rental unit at the end of the tenancy. The landlord claims an amount of \$360.00 for replacement of the doors. While I accept the landlord’s testimony regarding the

condition of the remaining doors and the evidence that the closet doors were missing, I find, based on the age of the tenancy, that these items would have required replacement in any event. Even if the closet doors remained in the rental unit, Policy Guideline 40 provides that the useful life of doors to be 20 years. I find that the landlord has not shown, on a balance of probabilities, that the replacement was necessitated by the tenant's actions. I dismiss this portion of the landlord's claim.

I find the landlord has not established on a balance of probabilities that the fireplace required cleaning. I accept the tenant's testimony that the fireplace was cleaned approximately four years ago and was not used since that time. The landlord testified that fireplace cleaning is a standard step when a tenancy ends. I find that the landlord has not shown that they have suffered a loss due to the tenant's actions. If fireplace cleaning is performed at the end of all tenancies, the landlord has not demonstrated that the cost is a result of the tenant's actions. I find that the tenant bears no responsibility for fireplace cleaning, as it is a standard step the landlord takes for all tenancies. I dismiss this portion of the landlord's claim.

As I find that the landlord was only partially successful in their application, I find that the landlord is not entitled to recover the filing fee paid for this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$280.00 of the tenants' security deposit in satisfaction of the monetary award issued in the landlord's favour.

The tenant makes an application for a return of the last month's rent. Section 51 of the *Act* provides that a tenant who receives a notice to end tenancy under section 49 [landlord's use of property] is entitled to receive the equivalent of one month's rent. However, in this matter the landlord did not issue a 2 Month Notice to end tenancy under section 49 but a 1 Month Notice pursuant to section 47 of the *Act*. Furthermore, the parties entered a full and final settlement at an earlier hearing under the file number on the first page. Therefore, there is no basis under the *Act* or an agreement where the tenant is entitled to a return of one month's rent. Accordingly, I dismiss this portion of the tenant's claim without leave to reapply.

I find that the tenant is entitled to a return of the balance of the security deposit and interest for this tenancy pursuant to section 38 of the *Act*. I find that the tenant is entitled to a return of \$1,007.92 of the security deposit for this tenancy. This amount includes the interest accrued to the date of the hearing, less the monetary award issued to the landlord.

Conclusion

I issue a monetary Order in the tenant's favour in the following terms which allows the landlord's monetary award and requires the landlord to return the remainder of the tenants' security deposit plus interest to the tenant:

<b>Item</b>	<b>Amount</b>
Security Deposit	\$475.00
Interest on Deposit of \$475.00 calculated to May 4, 2017, date of decision	\$812.92
Less Landlord's Monetary Award	-\$280.00
<b>Total Monetary Order to Tenant</b>	<b>\$1,007.92</b>

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: May 4, 2017

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Residential Tenancy Branch