



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTEMENT RENTALS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing was scheduled to deal with a landlord's application for compensation for damage to the rental unit; unpaid rent or utilities; damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the commencement of the hearing I noted that I was not provided with any documentary evidence for this proceeding by either party, with the exception of a registered mail receipt. The tenant acknowledged that she did not submit any evidence. The landlord stated that evidence was sent to the Residential Tenancy Branch and to the tenant. The tenant acknowledged receiving the landlord's evidence package. I accepted that it was possible that evidence was sent to the Branch and for some reason not included in the file before me. Both parties indicated that they wished to proceed with the matter and that I would authorize the landlord to submit another copy of the same evidence package sent to the tenant after the teleconference call ended. The next day I received 15 pages, including a cover page, from the landlord and I have reviewed the documents in making this decision.

During the hearing, I heard that the tenant had authorized the landlord to make deductions from the security deposit at the end of the tenancy and the landlord refunded the balance of the security deposit to the tenant. As for the purpose of this proceeding, the landlord explained that the tenant had subsequently sent an email to the landlord indicating that she did not agree with the deductions she had authorized and the landlord filed this application in response to the email.

Issue(s) to be Decided

Has the landlord established the right to make deductions from the security deposit?

Background and Evidence

The one year fixed term tenancy started August 1, 2016 and the tenant paid a security deposit of \$747.50. The tenant signed a move-in inspection report and "apartment inspection report".

The tenant moved out on November 28, 2016 and on November 30, 2016 the tenant signed a number of documents with the landlord, including: a move out inspection report indicating she agreed with the landlord's assessment of the condition of the property and authorized a deduction of \$242.89 from the \$747.50 security deposit; an "apartment inspection report" acknowledging "liability and subsequent charges" for \$242.89 for cleaning, carpet cleaning and blind replacement; and a "Security Deposit Refund" document agreeing to deductions totalling \$242.89 from the security deposit. The landlord refunded \$504.61 of the security deposit to the tenant on December 15, 2016.

On December 20, 2016 the tenant sent an email to one of the landlord's agents expressing dissatisfaction with her experiences during her tenancy and taking the position she was not responsible for the cleaning and damage she agreed to at the end of the tenancy. The tenant stated in the email that she signed the paperwork because she felt bullied and was told that she would not receive any part of her security deposit if she refused. The tenant states in the email that she expects the balance of her security deposit to be returned to her, less \$40.00 she agrees may be deducted for cleaning. The landlord responded to the email by filing this application and providing evidence in an attempt to support the deduction from the security deposit, including a copy of the tenancy agreement; the above described documents; and receipts.

The tenant testified that she signed the move-out inspection paperwork in the landlord's office and that an inspection was not done with the landlord. The landlord testified that an inspection was done with the tenant in the rental unit on November 28, 2016, when he obtained the keys from her, and the paperwork was signed in the landlord's office two days later on November 30, 2016. The tenant stated that by the time the paperwork was signed the cleaning was already done.

The tenant did not agree with having to pay for blind replacement. The tenant stated that the blinds were broken when she moved in and they were not fixed during her

tenancy. When the tenant objected to having to pay for blind replacement at the end of the tenancy the landlord told her he would look into it but when they had a discussion later on landlord told her she that if she did not agree to the deductions she would not get any part of her security deposit back because she had broken the lease. The tenant did not agree with having to pay for carpet cleaning since the tenancy was less than one year in duration.

### Analysis

Under section 38 of the Act, a landlord may make deductions from a security deposit if the tenant provides written consent to do so. In this case, it is undisputed that the tenant signed multiple documents at the end of the tenancy authorizing the landlord to make deductions totalling \$242.89 from the security deposit. I find it clear that the tenant provided the necessary written authorization for the landlord to deduct \$242.89 from the security deposit.

Although the tenant may have felt “bullied” into providing written consent, I reject that as a basis to set aside her written authorization. I find the tenant’s sense of feeling bullied does not rise to the level of coercion or duress that would render a person’s consent invalid and unenforceable.

Where parties do not agree on deductions that may be taken from a security deposit at the end of the tenancy, both parties have recourse under the Act, which involves making an Application for Dispute Resolution and participating in a hearing. I am of the view the tenant was presented with a choice to either agree to the deductions or face a claim by the landlord that may include other amounts that take into account an early end of the fixed term tenancy. I note that the tenancy agreement does include a liquidated damages clause that provides for payment of \$747.50 to the landlord that was not enforced. The tenant made a choice at the time and it would appear she has regrets or is trying to undo her agreement. I decline to undo her agreement as I am satisfied her agreement represents a negotiated settlement.

The landlord took the position that it had the lawful right to make the deductions it did. I have accepted that position and I find the landlord’s application was likely protective in nature rather than a necessity. Therefore, I leave the parties with their original agreement by authorizing the landlord to retain \$242.89 from the tenant’s security deposit and making no award for recovery of the filing fee.

Conclusion

The landlord established an entitlement to retain \$242.89 of the tenant's security deposit based on the tenant's written agreement to do so. The balance of the security deposit was refunded to the tenant. Accordingly, I do not provide either party with a Monetary Order.

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: July 14, 2017

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Residential Tenancy Branch