



# 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 MNSD FF

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* ("the Act"). The landlord applied for: 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; 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 applied for return of their security deposit pursuant to section 38 and authorization to recover the filing fee for this application pursuant to section 72. I note the tenants did not pay a filing fee for their application.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's application for dispute resolution and evidentiary submissions

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit and other loss under the *Act*?

Is the landlord entitled to retain all or a portion of the tenants' security deposit or is the tenant entitled to the return of their security deposit?

Is either party entitled to recover the filing fee for their applications?

### Background and Evidence

This tenancy began July 2013 as one year fixed term. At the end of the fixed term, the tenancy continued on a month to month basis with a \$1250.00 monthly rental amount. The tenants vacated the rental unit on April 30, 2017. The landlord continues to hold the \$625.00 security deposit paid by the tenants at the outset of this tenancy. The tenants sought the return of their security deposit while the landlord sought to retain the deposit and a further monetary amount for repairs and cleaning at the end of the tenancy.

The tenants provided notice to the landlord that they intended to vacate the rental unit on April 1, 2017. The tenants testified that on April 21, 2017, prior to the end of the tenancy, the landlord (manager) came to the rental unit, entered without notice or permission while Tenant A was at home. At that time, the landlord asked the tenant if the landlord could conduct a move-out inspection and make some repairs. Tenant A advised the landlord that he would make himself available for a condition inspection at the end of the tenancy in accordance with the Act.

The landlord testified that the tenants stated they would do repairs themselves prior to the end of tenancy. She testified that the tenants were not ready to move out when she came to meet with them for the move-out condition inspection on April 30, 2017. She testified that they told her they would not vacate the residence until May 1, 2017. The tenants denied this and testified they were out of the rental unit on April 30, 2017. Tenant A testified that he waited from 3.00 pm until 5.30 pm for the landlord/manager to return. When she did not return to conduct the condition inspection, he left the rental unit and contacted the landlord's company.

Tenant A testified that, at the request of the landlord's agent on the phone on April 30, 2017, he returned to the rental unit on May 1, 2017 to meet the property manager. He testified that the tenants had left a couch at the rental unit because they were unable to get it through the door. He testified that, on attending to the rental unit, the new tenant asked if they could keep the couch. Tenant A testified that he told the new tenant to keep the couch and then went to see the landlord (manager). He testified that the new tenant had moved very few items into the rental unit and that he asked the landlord if they could conduct a condition inspection. The landlord refused to conduct a condition inspection indicating that it was too late: the new tenant had moved into the unit.

The landlord submitted photographs of the rental unit after the tenants vacated the unit. She testified that, at the end of the tenancy, the rental unit was not cleaned and that a member of the landlord's staff spent two hours cleaning the rental unit. She testified that cleaning and materials cost \$264.00. She was unable to provide any documentation, receipt or invoice to reflect this cost.

The landlord testified that the rental unit required painting and patchwork for several nail holes. She testified that it had last been painted prior to this tenancy. She was unable to provide any documentation, receipt or invoice to reflect the \$205.00 cost claimed in her application. The landlord testified that the blinds required replacement. She testified that this was also done as a \$50.00 cost billed within the company. She submitted no invoice or record of the costs to the landlord.

The landlord testified that the wood burning fireplace was dirty and required extensive cleaning. She testified that it was clean at move-in and that it was filthy at move-out. She did not provide an invoice or any information regarding the cost to clean the fireplace but claimed an amount of \$35.00 for the fireplace cleaning. The landlord did not provide a photograph of the fireplace. The landlord also indicated that miscellaneous repairs were done at a total cost to the landlord of \$80.00. She was unable to itemize these repairs were and she did not provide any documentation (invoice or otherwise) to show the work and the cost of these repairs.

The landlord submitted a receipt for the cost of carpet cleaning at the end of tenancy. Both tenants testified that the carpet was curling up at the corners and threadbare when they moved *into* the rental unit. Tenant A testified that the carpet had to be cleaned after he moved in and he made that request of the landlord at the outset of the tenancy. The tenants acknowledged that they did not clean the carpet at the end of the tenancy: they testified that there was no point in cleaning it. The landlord did not submit documentary evidence that she requested that the tenants clean the carpet at the end of the tenancy. The landlord submitted a receipt in the amount of \$95.00 plus \$4.75 in tax for carpet cleaning on May 29, 2017.

The residential tenancy agreement submitted as evidence at this hearing indicates the following tenant obligations regarding the condition of the rental unit at move-out;

- Carpets must be professionally cleaned by the tenant at the end of the tenancy;
- Blinds or drapes will be cleaned annually by the tenant at the landlord's request;
- If the carpets and drapes were cleaned at the outset of the tenancy, the tenant will clean or pay the landlord for cleaning at the end of the tenancy.

The landlord also sought to recover one day of "over-holding". She testified that the new tenant moved into the unit on May 1, 2017 later in the day and that the new tenant paid rent (with no reduction) for the entire month of May 2017. The landlord testified that the tenants' over-holding of one day resulted in delays for the landlord in preparing the unit for the new tenant.

The tenants relied on their documentary evidence (including a copy of 2 separate residential tenancy agreements and digital evidence showing the condition of some portions of the rental unit as well as voice recordings) to show that there was water damage on the patio at move-in and that there were other required repairs at the outset of this tenancy. They referred to the notes submitted to the landlord and as evidence regarding the balcony and the blinds as well as a floor in very poor condition that required repair. Tenant A testified that repairs were made slowly over time. He testified that the fireplace was not maintained or cleaned thoroughly prior to the move-in and that the blinds required replacement at move-in. Both tenants testified that they cleaned very well prior to vacating the rental unit. They submitted a small amount of photographs showing some damage that they testified was present at the outset of the tenancy.

The landlord relied on photographic evidence submitted for this hearing. The photographs of the rental unit showed. The photographs did not provide date information. The tenants argued that the photographs were taken prior to them vacating the rental unit. The photographs show;

- Mostly clean kitchen with cleaning product containers on the counter;
- Dirt, food and unidentified black pellets behind the appliance(s);
- A few items in the kitchen cabinets;
- Dirty refrigerator coils;
- Old, *somewhat* unclean microwave;
- Dirty, uncleaned stove interior;
- Uncleaned refrigerator interior;
- Dirt in the corners in the mainly clean bathroom;
- Closed blinds (approximately 4 broken blind slats);
- Some wood/debris in the corner of the living room;
- One floor lamp and a vacuum left in the rental unit;
- Couch leaned up against the patio door;
- Propane tank and a moisture mark on the patio.

The tenants testified and the landlord confirmed that no condition inspection was completed with the tenants at the end of the tenancy. She testified that since the tenants did not make themselves available on April 30, 2017 when she went to their rental unit. She testified that, when they were not available at the time she went to their unit, she conducted an inspection herself. She testified that she did not provide another opportunity to the tenants to take part in a condition inspection. She testified that, it was with the provision of the landlord's application that she supplied the tenants with a copy of *her* condition inspection report.

## Analysis

The tenants vacated the rental unit on April 30, 2017. The landlord submitted that the tenants owe the landlord money for damage to the rental unit and that they are entitled to retain the tenants' security deposit that they continue to hold. 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 party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss (in this case, the landlord) bears the burden of proof.

Before determining whether the landlord has proven that there is loss and that their financial loss is the responsibility of the tenants, the landlord must show that the landlord's obligations under the *Act* were met both at the beginning and end of this tenancy. Section 37 of the *Act* requires the tenant to leave a rental unit reasonably clean and undamaged (except for reasonable wear and tear) at the end of the tenancy. The tenants are also required to vacate the rental unit at 1.00 pm on the last day of the tenancy. If I accept the tenants' testimony that they vacated the rental unit on April 30, 2017, they did not vacate at 1:00 pm.

Section 35 and 36 of the *Act* provide the requirements of the landlord at the end of the tenancy, specifically in regard to the condition inspection of the rental unit at the end of the tenancy and the condition inspection report,

- 35** (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit, or
  - (b) on another mutually agreed day.
- (2) **The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.**
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) **Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.**

(5) The landlord may make the inspection and complete and sign the report without the tenant if

- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
- (b) the tenant has abandoned the rental unit.

**36** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

- (a) the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and
- (b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 35 (2) *[2 opportunities for inspection]*,
- (b) having complied with section 35 (2), does not participate on either occasion, or
- (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

**[emphasis added]**

At the end of this tenancy, I accept the testimony of the tenants that they vacated the rental unit on April 30, 2017 however later than 1:00 pm. I accept the evidence of the tenants that they waited for the manager to attend to conduct the inspection and that she was not available when they completed their move out and cleaning. I accept the evidence of the tenants that one of them returned the following day to conduct a condition inspection and discuss the couch inside the rental unit.

I find that the landlord did not provide sufficient evidence to show that the tenant was offered at least 2 opportunities for the inspection. In her testimony, the landlord acknowledged that she did not provide a second opportunity for a condition inspection to the tenants. She did not dispute the tenant's evidence that she refused to conduct a condition inspection on May 1, 2017.

I also find based on the evidence and testimony at this hearing, the tenants were not provided with a copy of the condition inspection report, done by the landlord only

without the presence of the tenants, in accordance with the requirements of the Act. Therefore, I find that the landlord's right to collect against the security deposit is effectively extinguished and the tenants' security deposit should be returned. However, section 72(2) of the Act allows any monetary claim granted to the landlord to be reduced by the amount of the security deposit and the landlord is not prohibited from submitting a claim for a monetary amount independent of any request to retain the security deposit.

In making a claim against the tenants, the landlord must prove the existence of the damage/loss. I find that the landlord has proven damage and loss as a result of this tenancy. I find that the photographic evidence proves that the landlord was required to clean the rental unit, particularly to address the bathroom, kitchen, appliances and to remove small debris, a lamp and a vacuum from the rental unit. I find that the landlord has shown that the landlord was required to clean the carpets at the end of the tenancy. I find that the carpet and general rental unit cleaning were necessary as a result of the condition that the tenants left the rental unit in at the end of the tenancy.

While I accept, based on the photographic evidence the landlord's claim for unit and carpet cleaning, the tenants and the landlord gave conflicting testimony on most points at this hearing. Where there is no documentary or photographic evidence to support the landlord's application for damage, I must make a determination regarding the credibility of both parties. I find that the tenants testified in a candid manner, acknowledging some deficiencies they left at the end of the tenancy, including a couch left behind. I find that, generally, the tone (demeanour) of the tenants was calm and consistent with the other evidence before me. Therefore, with an exception of the tenants' standard of "clean" and whether the carpets should be cleaned at the end of the tenancy, I accept the testimony and evidence of the tenants.

With respect to the landlord's painting and repair of the unit, I find that this tenancy continued for approximately 4 years and I note that Residential Tenancy Policy Guideline No. 40 with respect to the useful life of items in a tenanted home provide that 4 years is the life of painting within a residential tenancy unit. Therefore, I find that the landlord would have been required to paint regardless at the end of this period of time. I find that the tenants are not responsible for the painting costs. I also find that the nail holes described by the landlord fall within reasonable wear and tear and that the nail holes and other patching is not the responsibility of the tenants.

I accept the testimony of the tenants that the blinds were damaged prior to the move-in. The breaking or bending of 4 blind slats, as shown in the landlords' evidence falls within reasonable wear and tear. Based on both findings, the tenants are not responsible for

the cost of blind repair. I note that, with respect to blinds, painting and wall patching, the landlord did not submit any receipts or invoices to support these amounts.

The landlord testified that the wood burning fireplace was dirty and required extensive cleaning. The condition of the fireplace was not documented in the photographic evidence. I accept the tenants' evidence that the fireplace was in poor condition at the outset and find that the tenants are not responsible for the cost of any cleaning of the fireplace. I also note that, with respect to the fireplace cleaning and the un-itemized "miscellaneous: repairs, the landlord provided no documentary evidence in the form of receipts or invoices to support the cost she claims.

The landlord submitted a receipt for the cost of carpet cleaning at the end of tenancy. I accept the testimony that the carpet was in poor condition at the outset of the tenancy. However I note that the tenants indicated the carpets were cleaned after their move-in and their request for carpet cleaning. While I appreciate that the tenants may be of the opinion that the carpets weren't worth cleaning, their residential tenancy agreement stipulates that they will clean the carpets at the end of the tenancy. Therefore, I find that the tenants are responsible to pay \$99.75 for carpet cleaning on May 29, 2017.

Pursuant to section 57 of the Act, the landlord sought to recover one day of "over-holding" however she provided candid, honest testimony that the new tenant still moved in on May 1, 2017 later in the day and that the new tenant paid rent (with no reduction) for the entire month of May 2017. I find that the landlord has not provided sufficient evidence of a cost to the landlord for any over-holding.

While the tenants testified that they cleaned the rental unit prior to vacating, I find the landlords photographs show otherwise and I find that the landlord is entitled to a cost for the cleaning of the rental unit. In my estimation, the tenants' standard of clean did not quite meet the standard for the condition of a rental unit at the end of tenancy. I find that the cost sought by the landlord is reasonable in the circumstances, for cleaning in the kitchen, bathroom, extensive cleaning inside and outside the kitchen appliances and removal of the 2 items left in the rental unit. Therefore, I find that the landlord is entitled to recover \$264.00 for cleaning costs.

I rely mainly on the photographic evidence of the landlord as well as the candid testimony of both parties. I note that while the landlord appears to have submitted portions of a condition inspection report, the "move-in" portion is scribbled out/no filled in, has no clear signatures or clear dates and the "move out" portion is disputed by the tenant. I find that the report submitted is not useful to serve as reliable evidence.



The landlord has provided sufficient evidence to prove that the tenants owe for cleaning totalling \$363.75. The landlord continues to hold the \$625.00 security deposit paid by the tenants at the outset of this tenancy. Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security and pet damage deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

With respect to the return of the security and pet damage deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the landlord was informed of the forwarding address on April 30, 2017 and therefore the landlord had 15 days after April 30, 2017 to take one of the actions outlined above. The landlord filed an application on May 10, 2017, within the allowable timeframe to make a claim against the security deposit.

The tenants sought the return of their security deposit. The landlord applied to the Residential Tenancy Branch to retain the tenants' deposits. I note that I have discussed that the landlord's rights are now limited in the retention of the security deposit based on the failure to act in accordance with section 38 of the Act regarding condition inspection reports. However, pursuant to section 72 of the Act, I find that the landlord is entitled to retain a portion of the tenants' security deposit towards the monetary amount of \$363.75 that the landlord is owed.

While the tenant applied to recover the \$100.00 filing fee, records show that the tenant did not pay the filing fee for this application. Therefore, I dismiss the tenant's application to recover the filing fee. The landlord is entitled to the recovery of the filing fee in these circumstances.

### Conclusion

I grant a monetary order to the tenants for the return of the remainder of their deposit as follows,

Item	Amount
Return of Security Deposit	\$625.00
Carpet cleaning	-99.75
Cleaning rental unit	-264.00
Recovery of Filing ( LL only)	-100.00

<b>Total Monetary Order</b>	<b>\$161.25</b>
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The tenants are provided with these Orders in the above terms and the landlord must be served with this Order 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: October 19, 2017

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Residential Tenancy Branch