



# Dispute Resolution Services

Page: 1

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      MNR, 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 applied for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant’s security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

The tenant applied for

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

### Issue to be Decided

Is the landlord entitled to a monetary award for loss and damages arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to the return of their security deposit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background, Evidence

The tenants' testimony is as follows. The one year fixed term tenancy began on August 1, 2016 but ended early on April 30, 2017. The tenants were obligated to pay \$1650.00 per month in rent in advance and at the outset of the tenancy the tenants paid an \$825.00 security deposit which the landlord still holds. The tenant testified that her roommate moved out early and she was unable to afford the rent requiring her to end the tenancy early. The tenant testified that the landlord did not suffer any losses and that they were able to re-rent the unit. The tenant testified that she disputes the landlords claim that the unit was dirty and that it required painting. The tenant testified that she left the unit in good condition at move out and that there was no damage to the walls. The tenant testified that there were some very minor scuffs on the walls which could be attributed to normal wear and tear. The tenant requests the return of her security deposit and the recovery of the \$100.00 filing fee.

The landlord gave the following testimony. The landlord testified that they originally were seeking liquidated damages but now only seek the recovery of cleaning costs, painting and the filing fee. The landlord testified that the unit was left dirty requiring 7.5 hours of cleaning. The landlord testified that the unit was painted prior to the tenant moving in. The landlord testified that the company policy is that the unit is repainted at the beginning of each tenancy regardless of length.

The landlord is applying for the following:

1.	Suite Cleaning	\$300.00
2.	Painting	588.00
3.	Filing fee	100.00
4.		
5.	Minus security deposit	-825.00
6.		
	Total	<b>\$163.00</b>

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the party's claim and my findings around each are set out below.

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 bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Firstly, I address the landlords claim and my findings as follows.

Cleaning – The landlord did not provide a receipt for the cleaning costs. The landlord testified that they have staff “in house” that does it. The landlord provided a close up photo of stove element and a small section of the bathroom floor. The tenant disputes this claim. The tenant testified that the unit was left in good condition and that the landlord has failed to prove their claim. The landlord has not satisfied me of the scope of work required to clean the unit by not providing a detailed outline of the work done or a receipt to support the amount as claimed or more supporting documentation or photos of the unit at move out, accordingly; I dismiss this portion of their claim.

Painting- The landlord testified that the tenant was responsible for damage to the walls including holes in the wall. However, the landlords' condition inspection report fails to mention any damage whatsoever. Based on the insufficient evidence before me, the landlord has failed to satisfy any of the four factors as listed above; accordingly I dismiss this portion of their claim.

The landlord has not been successful in their application. The tenant is entitled to the return of their \$825.00 security deposit.

The tenant is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The tenant has established a claim for \$925.00. I grant the tenant an order under section 67 for the balance due of \$925.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlords' application is dismissed in its entirety.

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 23, 2017

---

Residential Tenancy Branch