



# 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      MNSD, FF, MNDC, MND

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or 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.

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. Both parties gave affirmed evidence.

### Issue to be Decided

Is the landlord entitled to a monetary award for loss 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?

### Background, Evidence

The landlord's testimony is as follows. The one fixed term tenancy began on January 13, 2017 but ended early on May 31, 2017. The tenants were obligated to pay \$1700.00 per month in rent in advance and at the outset of the tenancy the tenants paid an \$850.00 security deposit. The landlord testified that they originally sought \$850.00 for liquidated damages but as they've rented the suite for June 1, 2017 they no longer seek that. The landlord testified that the tenant did not leave the suite clean at move out and that it smelt like fruity tobacco. The landlord testified that they incurred costs of \$250.00 to clean the unit and \$500.00 to paint the unit. The landlord also seeks the recovery of the \$100.00 filing fee. The landlord testified that their costs equalled the

exact amount of the deposit and seeks an order allowing them to retain it in full satisfaction of the claim.

The tenant gave the following testimony. The tenant testified that he cleaned the unit very well and that the landlord was being unreasonable at the move out inspection. The tenant testified that he does not smoke so he has no idea why the landlord is alleging the unit smelt like tobacco. The tenant testified that he wants his deposit back.

### 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 landlord'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.

I address the landlords' claims and my findings as follows.

#### Cleaning - \$250.00

The landlord testified that the cleaners spent five hours in the unit cleaning it. The tenant provided a copy of the move in and move out condition inspection report as part of their documentary evidence. The tenant disputed the condition of the unit as purported by the landlord at move out and refused to sign it. The landlord testified that she had receipts to support the cost of cleaning, the hours worked and details of that work; however, the landlord did not provide that documentation for this hearing. The landlord has not provided sufficient evidence that the unit was dirty as they allege or the actual cost to clean it. The landlords have not satisfied all four factors as listed above. Based on the insufficient evidence before me I dismiss this portion of their application.

#### Painting - \$500.00

The landlord testified that the unit was painted prior to the tenant moving in. The landlord testified that the unit had to be painted when the tenant moved out due to the strong smell of a fruity tobacco in the unit. The tenant testified that he does not smoke

and is unclear what the landlord is alleging. As noted above, the landlord indicated that she could prove the scope of work, the hours and cost that the painters charged, but the landlord did not submit that documentation for this hearing. The landlord has not provided sufficient evidence to show that the unit required painting as they allege or the actual cost to paint it. The landlords have not satisfied all four factors as listed above. Based on the insufficient evidence before me I dismiss this portion of their application.

The landlord has not been successful in their application.

### Conclusion

The landlords' application is dismissed in its entirety. I order that the landlord return the deposit to the tenant. I grant the tenant an order under section 67 for the balance due of \$850.00. This order may be filed in the Small Claims Court and enforced as an order 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: November 22, 2017

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Residential Tenancy Branch