



# 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, conducted by a conference call, dealt with applications from both the corporate landlord and the tenants under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- a monetary award for damages or loss pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit 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:

- a monetary award for damages and loss pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to speak, present evidence, provide affirmed testimony and call witnesses. The corporate landlord was represented by its agent LV (the "landlord"). The tenant SM confirmed she represented both named co-tenants.

As both parties were in attendance I confirmed service. The parties testified that they were in receipt of the respective applications for dispute resolution and evidence. I find that the parties were duly served with the respective application packages in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to retain all or a portion of the security deposit for this tenancy?

Are the tenants entitled to a monetary award as claimed?

Is either party entitled to recover the filing fee for this application from the other?

Background and Evidence

The parties agreed on the following facts. This tenancy began in February, 2015 and ended in July, 2017. A security deposit of \$550.00 was paid at the start of the tenancy. The parties participated in a condition inspection at the start of the tenancy and a report was prepared. The parties participated in a move-out inspection on July 28, 2017. The tenant disagreed with the landlord's assessment of the rental unit condition and did not give written authorization that the landlord may deduct any amount from the security deposit. The tenant provided a forwarding address on July 28, 2017. The landlord issued a cheque in the amount of \$338.50 to the tenants and filed an application to retain \$211.50.

The landlord seeks a monetary award in the amount of \$211.50 for the following items.

Item	Amount
Carpet Cleaning	\$115.50
Cleaning Labour (2 hours x \$40)	\$80.00
Cleaning Materials	\$16.00
<b>TOTAL</b>	<b>\$211.50</b>

The parties submitted into written evidence a copy of the inspection report completed on July 28, 2017 and signed by the parties. The inspection report lists some items in the rental unit as being dirty requiring cleaning. The landlord testified that the condition inspection report was completed together with the tenant. The tenant testified that while she signed the inspection report she believed that it was simply a document confirming she was returning the keys. The tenant said that she does not recall if the landlord had recorded the condition of the rental unit when she signed the form. The parties agree that the tenant was quite emotional and distraught when the landlord informed her that there would need to be deductions made from the deposit.

The tenant testified that she disagrees with the landlord's assessment that the rental unit required cleaning. The tenant gave evidence that she personally cleaned the rental

unit prior to the date of the inspection and the suite was clean. The tenant submitted into written evidence photographs she took of the condition of the rental unit. The landlord pointed out several areas in the photographs that they believe were not sufficiently cleaned.

The parties submitted into written evidence a copy of a Security Deposit Refund form where the landlord recorded the amount that would be deducted from the \$550.00 security deposit. The form is not signed by the tenant. The landlord said that she knew the amount to be deducted for cleaning costs based on her experience managing properties. The tenant said that she was not told the amount that would be deducted by the landlord and was simply informed that there would be a deduction.

The tenants seek a monetary award in the amount of \$2,625.16 for the following items.

<b>Item</b>	<b>Amount</b>
Double Security Deposit (2 x \$550.00)	\$1,100.00
Breach of Trust	\$500.00
Loss of Income	\$525.16
Stress & Anxiety	\$500.00
<b>TOTAL</b>	<b>\$2,625.16</b>

The tenant said that while she received a cheque from the landlord in the amount of \$338.50, she did not cash that cheque as she did not authorize the landlord to deduct any amount from the security deposit.

In regards to the claim for a breach of trust the tenant submits that the copy of the tenancy agreement received from the landlord contains discrepancies with her copy. The tenant believes that the inaccuracy is a breach of trust giving rise to her monetary claim.

The tenant testified that both she and her spouse have had to take time off of work in order to pursue the present application. The tenant calculates that the lost earnings is \$525.16 and seeks to recover that amount from the landlord.

The tenant submits that the process has caused her considerable stress and anxiety. She has submitted into written evidence a note from a doctor stating she has been seen for complaints as a result of stress from her rental dispute.

### 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. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit and pet damage deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit and pet damage deposit as per section 38(4)(a).

I accept the undisputed evidence of the parties that the tenancy ended on July 31, 2017 and the tenants provided a forwarding address in writing on July 28, 2017. The landlord filed their application to retain the security deposit on August 10, 2017. Therefore, I find that the landlord was within the timeframe granted by statute to file their application to retain the security deposit.

The parties agree that the tenant did not provide written authorization that the landlord may retain all or a portion of the security deposit as they did not sign the Security Deposit Refund form. The parties agree that the tenant signed the Inspection Report but disagree as to what should be inferred from the tenant's signing. In both her written submissions and testimony the tenant states that she "had no idea what I signed that day". The tenant testified that she believed she was simply signing an acknowledgement that she was returning the keys to the landlord. The tenant said that she does not recall if the report contained the landlord's notations about the condition of the rental unit.

The copy of the condition inspection report is a legal sized sheet with most of the form consisting of a list of items in the rental unit and columns to make notes about their condition. At the bottom of the page is a space for signatures. Above the tenant's signature line is a typewritten Declaration which reads:

I/We, being the tenant(s) acknowledge liability and subsequent charges for the above-noted cleaning and damages or the condition of this suite is as noted, as my signature attests to his fact.

I find the tenant's submission that they did not understand that signing the condition inspection report indicates that they agree with the assessment of the rental unit condition to be dubious. The tenant had the opportunity to read any document prior to signing or refuse to sign if she disagreed with its contents. The tenant did not agree to

the landlord withholding any amount from the security deposit and accordingly did not sign the Security Deposit Refund form. I do not find it consistent that the tenant would sign an inspection report if she disagreed with its contents. I find the tenant's claim that she believed the form simply to be an acknowledgement that she was returning the rental unit keys to not be convincing. The form consists primarily of a list of the areas and items of the rental unit with a large column to record the condition of the items. I do not find it reasonable that a person would believe that signing this form would solely indicate a return of the keys.

While the tenant said that she was emotionally distraught and was made to sign the report by the landlord, I find there is little evidence that the tenant's signature was obtained through fraudulent means. The tenant said she does not recall if or what the landlord had written on the report about the state of the rental unit at the time of signing. The landlord testified that the comments were written at the time of the inspection and the report provided to the tenant for signing. Based on the testimonies of the parties I find it more likely that the condition inspection report contained the landlord's handwritten comments about the condition of the unit and the tenant failed to read or review the contents prior to signing.

Even if I were to find that the tenant did not comprehend the meaning of the document she was signing, I find that would not be an excuse to not hold the tenant accountable. In the absence of any evidence that the tenant's signature was obtained through fraudulent means, I find that the tenant by signing the condition inspection report agreed to the assessment of the condition of the rental unit.

The tenant has submitted photographs of the rental unit at the time of the inspection. The landlord pointed out the areas that they deemed required cleaning on those photographs. While it is not disputed that the tenant took effort to clean the rental unit, the landlord submits that the cleaning was not sufficiently comprehensive and deep to meet professional standards. The landlord states that the carpets needed to be professionally cleaned.

I accept the evidence of the parties that the tenant made some effort to clean the rental unit. However, I accept the landlord's testimony that the cleaning was not sufficient and that there were still areas of the rental suite that required additional, professional cleaning. I accept the landlord's documentary evidence, by way of the cleaning invoices, that the cost of cleaning was \$211.50. Accordingly, I find that the landlord succeeds in their claim to retain that amount from the security deposit for this tenancy.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

The tenant makes a claim for a monetary award for breach of trust. Breach of trust is a specific claim that arises when a trustee violates a duty that they have through equity or the trust instrument. I find that a claim for breach of trust is not applicable in the present circumstances. This is a situation where two equal parties entered into a contract for residential tenancy. I find that there is no fiduciary relationship between the parties that would give rise to a claim for breach of trust.

Based on the contents of the tenant's written submission and her testimony the underlying complaint appears to be that the tenant feels that there were inaccuracies in some of the documents submitted by the landlord. I find that there is insufficient evidence that there has been any violation of the *Act*, regulations or tenancy agreement, or that the tenant has suffered any damage or loss. Consequently, this portion of the tenant's application is dismissed.

The tenant claims for the loss of wages as she has taken time off work to pursue her claim. I find that this is not a loss attributable to the landlord. There is no evidence that the landlord has violated the *Act*, regulations or tenancy agreement to give rise to this claim. The landlord acted within their rights by making an application to retain the security deposit. Similarly, the tenants filed their own application for a monetary award. There has been no violation to give rise to this claim and I consequently dismiss it.

The tenant seeks a monetary award for stress and anxiety arising from this proceeding. I find that there is no merit to this claim. As stated above, both parties acted in accordance with the *Act* and brought forward their respective applications. There is no evidence that the landlord has acted in a manner which was in violation of the *Act*, regulations or tenancy agreement. Furthermore, I note that this hearing deals with applications from both parties. If the tenant experienced stress and anxiety from the dispute resolution process I find that it cannot be solely attributed to the landlord.

The tenants' claim for a monetary award is dismissed.

As the landlord's application was successful the landlord is entitled to recover the \$100.00 filing fee for their application.

The parties testified that while the landlord had issued a cheque to the tenant in the amount of \$338.50 for a return of the security deposit in August, 2017, it was not cashed and the landlord still retains the full security deposit amount of \$550.00.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$311.50 of the tenants' \$550.00 security deposit in satisfaction of the monetary award issued in the landlord's favour.

### Conclusion

The landlord is authorized to retain \$311.50 of the security deposit for this tenancy. The balance of the deposit, \$238.50 is to be returned to the tenants.

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: February 20, 2018

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Residential Tenancy Branch