



# 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      MNDCL-S, FFL

### Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord requesting a monetary order for cleaning and damages. The Landlord also requests an order for payment of the filing fee and to retain the security deposit.

The Landlord’s property manager and one of the Tenants appeared for the scheduled hearing. The Landlord provided evidence that both Tenants were served with the Notice of Hearing on March 19 and again on March 24, 2018 by registered mail. Neither party raised a concern about the service of the Notice of Hearing or evidence that was submitted by the parties.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, call witnesses and to cross-examine the other party on the relevant evidence provided in this hearing.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

### Issues to be Decided

Is the Landlord entitled to a monetary order for cleaning and damages, pursuant to section 67 of the Residential Tenancy Act (“Act”)?

Is the Landlord entitled to retain the security deposit, pursuant to section 38 of the Act?

Is the Landlord entitled to payment of the filing fee pursuant to section 72 of the Act?

Background and Evidence

The Landlord states this tenancy began September 1, 2016 and ended January 31, 2018; the Tenant states that it ended February 1, 2018. Rent of \$1,600.00 was payable on the first of each month; a security deposit of \$800.00 was paid by the Tenants to the Landlord. A rent increase to \$1,659.00 was put into effect in November of 2017. A copy of the signed tenancy agreement and the rent increase notice were submitted into evidence.

The Tenants provided a forwarding address in writing on March 13, 2018, which is acknowledged by the Landlord. A move-in and move-out Condition Inspection Report was also submitted into evidence, which indicates that cleaning and painting was needed at the end of the tenancy. The Landlord states that the Tenants did not leave the rental unit in proper condition and that it incurred the following expenses to address deficiencies so that the unit could be re-rented:

General cleaning	\$140.00
Drapery cleaning	30.00
Painting and materials	<u>222.75</u>
 TOTAL CLAIMED:	 \$392.75

Receipts for the labour were submitted into evidence. The Landlord states that the Tenant did not dispute the general cleaning expense, but he did not agree with the painting charges. The Landlord states that the Tenants smoke cannabis inside the rental unit and that it was apparent from the odour left in walls, ceiling and draperies. The new renters required the place to be painted to remove the odour. The Landlord states that signs were posted that it was a non-smoking building and that the tenancy agreement also states this.

The Tenant states that this is an older building with another resident who was a drug dealer that likely caused the odour from drug use. The Tenant did not dispute that they were also smoking cannabis in the rental unit but argued that the smell did not

permeate the walls and ceilings in every room, requiring painting throughout the residence. He is in agreement with the general cleaning costs; it was his understanding that the building automatically charged for cleaning from their own staff at the end of every tenancy and this charge was expected. However, it is his position that the property manager was under pressure to come up with additional false charges in order to increase the amount of the security deposit the Landlord could retain.

### Analysis

Under section 7 of the Act, a party who fails to comply with the Act, regulation, or tenancy agreement must compensate the other party for damage or loss that results. To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. that a damage or loss exists;
2. that the damage or loss results from a violation of the Act, regulation or tenancy agreement;
3. the value of the damage or loss; **and**
4. steps taken, if any, to mitigate the damage or loss

The Applicant bears the burden of proving their claim, on a balance of probabilities.

### ***Leaving the rental unit at the end of a tenancy***

**37** (1) *Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.*

(2) *When a tenant vacates a rental unit, the tenant must*

*(a) **leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and***

*(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property. [bolding added]*

Smoking inside a building causes a build up of residue on surfaces; this includes the ceiling and the walls. The Landlord has satisfied me that the residents were aware that this was a non-smoking building. The Tenant did not deny that cannabis was being smoked inside the rental unit. I find the Landlord's evidence to be credible and that the Landlord would not have incurred the additional charges to paint the rental unit unless

the suite had an odour that was offensive. The damage caused by the cannabis smoking goes beyond “reasonable wear and tear” and I find that the Tenants are jointly and severally liable for the expenses incurred by the Landlord to paint the rental unit at the end of the tenancy, so that it could be re-rented.

The Landlord is awarded the full amount claimed, as well as the filing fee of \$100.00, for a total of \$492.75. The Landlord is holding the security deposit of \$800.00 in trust, which must also be addressed.

Under section 38 of the Act, a landlord must return a security deposit or file a dispute application within 15 days after the later of the tenancy ending or the date the landlord receives the tenant’s forwarding address in writing. The Landlord states that the Tenant sent an email with the forwarding address on March 14, 2018; although email is not usually an acceptable form of notice, the Landlord acknowledged receipt of this information and used it to serve the Notice of Hearing. Accordingly, the Landlord had 15 days from March 14<sup>th</sup> to file a dispute application or return the security deposit. The Application was filed on March 15, 2018 and therefore, I find that the Landlord was entitled to retain the security deposit until this matter was heard by an Arbitrator.

I find that the Tenants are entitled to a return of the security deposit after the deduction is made for the cleaning, painting and filing fee, calculated as follows:

Item	Amount
General Cleaning	\$140.00
Cleaning Draperies	30.00
Painting & Materials	222.75
Less: security deposit	(\$800.00)
Recovery of Filing Fee for this Application	100.00
<b>Balance to Tenants</b>	<b>\$307.25</b>

I grant the Tenants a monetary order in the amount of \$307.25. This order must be served on the Landlord and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Landlord fails to make payment. Copies of this order are attached to the Tenant’s copy of this Decision.

Conclusion

The Landlord shall pay forthwith to the Tenants the balance of their security deposit in the sum of \$307.25.

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 22, 2018

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Residential Tenancy Branch