



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 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
- an order authorizing the landlord the recovery of the filing fee for this 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. The tenant acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the landlord entitled to a monetary award for damage 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 the recovery of the filing fee?

Background, Evidence

The landlord's testimony is as follows. The one year fixed term tenancy began on January 1, 2018 and was to end on December 31, 2018 however the tenant ended the tenancy early on August 31, 2018. The tenant was obligated to pay \$1700.00 per month in rent in and at the outset of the tenancy the tenant paid an \$850.00 security

deposit which the landlord still holds. The landlord testified that the tenant left the unit dirty, with some minor damage and didn't return the keys. Written condition inspection reports were conducted at move in and move out. The tenant initially agreed with the move out report when he thought he was getting his deposit back but then changed his mind when the landlord advised they would be applying to keep it. The landlord advised that the tenant "broke the lease" early and they also seek \$850.00 for liquidated damages as part of their tenancy agreement.

The landlord is applying for the following:

1.	Liquidated damages	\$850.00
2.	Cleaning and Materials	72.00
3.	Painting and Materials	40.50
4.	3 keys	75.00
5.	Filing Fee	100.00
6.		
7.		
8.		
9.		
10.		
	Total	\$1137.50

The tenant gave the following testimony. The tenant testified that he moved out because the neighbouring tenant had "hyper hearing" and complained about him making noise on a regular basis. The tenant testified that he was just moving around the suite in a normal manner however the neighbor would complain. The tenant testified that he felt he left the unit clean and undamaged. The tenant requests the return of his security deposit.

Analysis

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 claim and my findings as follows.

The landlord provided extensive documentation, condition inspection reports, the tenancy agreement, clear, concise, credible testimony, and receipts to support their

application. The tenant acknowledged that he ended the tenancy pre-maturely but felt he had justification. The tenant testified that he had evidence to dispute the landlords claim but did not submit them for this hearing. I am satisfied that the tenant breached clause 4 of their tenancy agreement triggering the liquidated damages clause and I am also satisfied that the unit was left in the condition as reported by the landlord on the move out condition inspection report. I find that the landlord has provided sufficient evidence to prove their claim, based on a balance of probabilities. The landlord is entitled to their entire claim.

Conclusion

The landlord has established a claim for \$1137.50. I order that the landlord retain the \$850.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$287.50. 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: January 15, 2019

Residential Tenancy Branch