



# 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      FFL MNDL-S MNRL-S

### Introduction

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

- a Monetary Order for unpaid rent and for compensation for damage or loss under the *Act* pursuant to section 67 of the *Act*;
- authorization to retain the tenants' security deposit in partial satisfaction of this claim pursuant to sections 38 and 67 of the *Act*; and
- recovery of the filing fee for this application from the tenants pursuant to section 72 of the *Act*.

The landlord's agent L.B. (herein referred to as "the landlord") appeared at the date and time set for the hearing of this matter and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenants did not attend this hearing, although I left the teleconference hearing connection open until 2:10 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

As only the landlord attended the hearing, I asked the landlord to confirm that the tenants had been served with the Notice of Dispute Resolution Proceeding for this hearing. The landlord testified that the two tenants were individually served with the landlord's notice of this hearing and evidence by Canada Post registered mail on April 15, 2019, and provided two Canada Post registered mail tracking numbers as proof of

service, which I have noted on the cover sheet of this decision. The landlord testified that the packages were sent to the tenants' forwarding address provided by the tenants on the notice to end tenancy. During the hearing, I accessed the Canada Post website to confirm that the landlord's notice of this hearing was signed for as received by tenant R.G. on April 25, 2019 and that the other package was "unclaimed" by tenant D.C.

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or 'deemed' received on the fifth day after mailing it is served by mail (ordinary or registered mail).

Residential Policy Guideline 12. Service Provisions provides guidance on determining deemed receipt, as follows:

*Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.*

Therefore, I find that tenant R.G. was served with the notice of this hearing and the landlord's evidence on April 25, 2019 and tenant D.C. was deemed served with the notice of this hearing and the landlord's evidence on April 20, 2019, the fifth day after mailing, in accordance with sections 89 and 90 of the *Act*.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to a monetary award for compensation for damage or loss?

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

#### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence by the landlord, and the landlord confirmed the following information pertaining to this tenancy:

- This fixed-term tenancy began September 15, 2018 with a scheduled end date of March 31, 2019.
- Monthly rent of \$2,200.00 was payable on the first of the month.
- The tenants paid a security deposit of \$1,100.00, which continues to be held by the landlord.

The landlord testified that the on October 18, 2018 the tenants provided notice to the landlord on February 14, 2019 that they wished to end their tenancy effective March 31, 2019.

The landlord testified that landlord and the tenants participated in a condition inspection of the rental unit at move in and at move out. The landlord testified that she provided the tenants with a written copy of the condition inspection report upon completion of both inspections. The landlord submitted a copy of the completed inspection reports into documentary evidence.

The landlord testified that the tenants provided their forwarding address in their notice to end tenancy email sent to the landlord February 14, 2019.

The tenants vacated the rental unit March 31, 2019.

The landlord filed an Application for Dispute Resolution on April 11, 2019, seeking to retain the tenants' security deposit against a claim of \$2,200.00 for unpaid rent for March 2019, and a claim for compensation of \$487.77 for damages and loss related to painting and cleaning costs.

In support of their claim, the landlord submitted into evidence a rent ledger showing the tenants March 2019 rent cheque returned as "NSF" on March 4, 2019; a receipt for \$288.75 for painting costs; a receipt for \$72.00 for cleaning and cleaning supplies; and a security deposit refund form upon which the landlord has claimed a higher cost for painting and an additional claim for painting supplies.

### Analysis

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant. The claimant bears the burden of proof. The claimant must show the

existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* by the other party. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to section 7(2) of the *Act*.

In this case, the landlord has claimed for compensation for unpaid rent and damages. I have addressed my findings on each of these heads of claim.

1) Unpaid Rent

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

I accept the landlord's unchallenged testimony that the agreed upon terms of the tenancy required the tenants to pay \$2,200.00 in monthly rent. As such, based on the testimony and evidence before me, on a balance of probabilities, I accept the sworn testimony of the landlord that the tenants failed to pay rent for the month of March 2019.

Therefore, I find the landlord is entitled to a monetary award of \$2,200.00 for unpaid rent owed by the tenants.

2) Damages and Cleaning Costs

Section 37(2) of the *Act* sets out the requirements for a tenant to fulfill when vacating the rental unit, as follows, in part:

- 37(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,...

Based on the evidence submitted by the landlord in support of their claim, which included move in and move out condition inspection reports, a receipt for painting costs and a receipt for cleaning costs, I find that there is sufficient evidence that the tenants caused damage beyond reasonable wear and tear and failed to leave the rental unit reasonably clean. Therefore, I find that the claimant has shown that the damage or loss claimed stemmed directly from a violation of the agreement or a contravention of the *Act* by the other party.

However, as explained at the beginning of this section, compensation for loss or damage under the *Act* is only provided when a party has established the existence of the monetary loss or damage, which is usually done through the submission of invoices or receipts into documentary evidence.

In this matter, I find that the landlord has only provided sufficient evidence to establish the monetary amount of the damage or loss where a receipt has been submitted into evidence. As such, I have only considered the amounts of \$288.75 for painting costs and \$72.00 for cleaning costs.

In determining damages related to repair and replacement costs for building elements, my assessments are determined in accordance with Residential Tenancy Policy Guideline 40. Useful Life of Building Elements. This Guideline notes:

*Useful life is the expected lifetime, or acceptable period of use, of an item under normal circumstances...if the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.*

As the landlord testified that the rental unit was last painted in September 2018, six months prior to the end of the tenancy in March 2019, I have allocated 87.5% as the percentage of replacement cost attributable to the tenants, based on Policy Guideline 40, which provides that paint has a useful life of four years.

Therefore, based on the evidence and testimony presented to me, on a balance of probabilities, I find that the landlord is entitled to a monetary claim for painting costs of \$252.66 [87.5% of \$288.75] and cleaning costs of \$72.00.

A summary of compensation allocated for the landlord's compensation and damages claim is provided as follows:

<b>Item</b>	<b>Amount</b>
Unpaid rent for March 2019	\$2,200.00
Painting costs	\$252.66
Cleaning costs	\$72.00
<b>Total Monetary Award to Landlord for Damages Claim</b>	<b>\$2,524.66</b>

### **Set-off Against Security Deposit**

In summary, I find that the landlord is entitled to a monetary award of \$2,524.66.

The landlord continues to retain the tenants' \$1,100.00 security deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I set-off the total amount of compensation owed by the tenants to the landlord of \$2,524.66, against the tenants' security deposit of \$1,100.00 held by the landlord, in partial satisfaction of the total monetary award in favour of the landlord.

Further to this, as the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants.

As such, I issue a Monetary Order in the landlord's favour for the remaining amount of the monetary award owing in the amount of \$1,524.66.

A summary of the monetary award is provided as follows:

<b>Item</b>	<b>Amount</b>
Monetary award in favour of landlord	\$2,524.66
Recovery of the filing fee from the tenants	\$100.00
LESS: Security deposit held by landlord	(\$1,100.00)
<b>Total Monetary Order in Favour of Landlords</b>	<b>\$1,524.66</b>

### **Conclusion**

I order the landlord to retain the \$1,100.00 security deposit for this tenancy in partial satisfaction of the monetary award granted to the landlord for compensation for unpaid rent and damages.

I issue a Monetary Order in the landlord's favour against the tenants in the amount of \$1,524.66 in satisfaction of the remaining amount of loss owed, and to recover the landlord's filing fee for this application.

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this

Order, this Order may be filed in the Small Claims Division of the Provincial 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: July 30, 2019

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Residential Tenancy Branch