



# 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**

Code MNR, MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for loss of rent, for damages to the unit and for an order to retain the security deposit in partial satisfaction of the claim.

The landlord’s agent attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord’s agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on May 3, 2019, a Canada post tracking number was provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

The landlord’s agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for loss of rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on November 1, 2016. Current rent in the amount of \$1,454.00 was payable on the first of each month. The tenant paid a security deposit of \$675.00. The tenancy ended on March 31, 2019.

The landlord claims as follows:

|    |                             |                   |
|----|-----------------------------|-------------------|
| a. | Loss of rent for April 2019 | \$1,454.00        |
| b. | Carpet cleaning             | \$ 124.95         |
| c. | Replace linoleum floor      | \$ 400.00         |
| d. | Cleaning unit               | \$ 227.49         |
| e. | Painting                    | \$ 205.00         |
| f. | Light bulbs                 | \$ 19.99          |
| g. | Filing fee                  | \$ 100.00         |
|    | <b>Total claimed</b>        | <b>\$2,431.43</b> |

Loss of rent for April 2019

The landlord's agent testified that they received the tenant's notice to end tenancy, dated March 21, 2019, on March 28, 2019, to end the tenancy on March 31, 2019. The landlord's agent stated the tenant breached the Act and it did not give them sufficient time to find a new renter for April 2019. The agent stated that they were able to find a new renter for May 1, 2019. The landlord seeks to recover loss of rent for April 2019, in the amount of \$1,454.00. Filed in evidence is the notice to end tenancy.

Carpet cleaning

The landlord's agent testified that the tenant did not have the carpets cleaned at the end of the tenancy and they were dirty. The landlord seeks to recover the cost of carpet cleaning in the amount of \$124.95. Filed in evidence is a photograph of the carpet.

### Replace linoleum floor

The landlord's agent testified that the tenant had burnt the flooring from what appeared to be from a hot pot on the floor. The agent stated that this was not notice during the tenancy as the tenant had covered it up with a carpet. The agent stated that the flooring was new in 2015. The landlord seeks to recover the cost of the new flooring in the amount of \$400.00. Filed in evidence is a photograph of the flooring.

### Cleaning

The landlord's agent testified that the then did not leave the rental unit clean. The agent stated that the bathroom and shower were dirty. The agent stated that the stove, walls and floor around the stove were dirty. The agent stated that they had to pay to have rental the unit cleaned. The landlord seeks to recover the cleaning cost in the amount of \$227.49. Filed in evidence are photographs of the rental unit.

### Painting

The landlord's agent testified that the rental unit was freshly painted at the start of the tenancy. The agent stated that they had to have the rental unit repainted at the end of the tenancy for the cost of \$900.00. The agent stated that they are not claiming the full amount of the cost of painting; however, they are claiming for areas that were damaged by the tenant, as there were large black lines on the walls. The landlord seeks to recover for painting the amount of \$205.00. Filed in evidence is a photograph of the walls.

### Light bulbs

The landlord's agent testified at the end of the tenancy there were six light bulbs burnt out. The landlord seeks to recover the cost of replacement in the amount of \$19.99.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard,

that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

#### Loss of rent for April 2019

##### **Tenant's notice (month-to-month)**

**45** (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

*(a) is not earlier than one month after the date the landlord receives the notice, and*

*(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement*

...

In this case, the evidence of the landlord's agent was the tenant did not give notice until March 28, 2019 to end the tenancy on March 31, 2019. Under section 45(1) of the Act the tenant was required to provide the landlord with at least one month notice to end the tenancy. I find that the tenant has breached the Act as the earliest date they could have legally ended the tenancy was April 30, 2019.

Since the tenant failed to comply with the Act by not given the landlord sufficient notice to end the tenancy. The landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy. As the short notice given by the tenant did not give the landlord sufficient time mitigate the loss, I find the landlord is entitled to recover April 2019, rent in the amount of **\$1,454.00**.

## *Damages*

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

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

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

### Carpet cleaning

I accept the undisputed testimony of the landlord's agent that the tenant did not have the carpets cleaned at the end of the tenancy. This is supported by the photographs. I find the tenant breached the Act, when they failed to clean the carpets and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost of carpet cleaning in the amount of **\$124.95**.

### Replace linoleum floor

I accept the undisputed testimony of the landlord's agent that the tenant had burnt the flooring. This is supported by the photographs. I find this is not normal wear and tear, rather neglect. I find the tenant has breached the Act when they failed to leave the rental unit undamaged.

The Residential Tenancy Policy Guideline 40 (the "PG") defines the useful life of building elements. If the tenant damaged an item, the age of the item may be considered when calculating the tenant's responsibility for the cost of replacement.

Although the PG does not specifically list linoleum floor, I find it not unreasonable that it would have a useful life span of 10 years, when comparing the PG, with other flooring such as carpet. As the flooring was approximately five years old at the end of the tenancy, I find the landlord is entitled to recover the depreciated value of 50%. As the

cost to replace the floor was \$400.00, I find the landlord is entitled to recover the depreciated value of **\$200.00**.

#### Cleaning

I accept the undisputed testimony of the landlord's agent that tenant did not leave the rental reasonably unit clean. The photographs show the bathroom and shower was dirty, window tracks were not cleaned and the stove and stove area were dirty. I find the tenant breached the Act, when they failed to clean the above said items. I find the landlord is entitled to recover cleaning costs in the amount of **\$227.49**.

#### Painting

I accept the undisputed testimony of the landlord's agent that tenant caused damage to the walls. The photographs show large black scrapes on the walls. This is not normal wear and tear, rather neglect. I find the tenant breached the Act, when they failed to leave the rental unit undamaged.

In this case, the landlord is not seeking for the entire cost of painting, I find that reasonable. I find the landlord is entitled to recover the portion of painting that was directly related to the damage. I find the amount claimed by the landlord is reasonable. I find the landlord is entitled to recover the cost of painting in the amount of **\$205.00**.

#### Light bulbs

I accept the undisputed testimony of the landlord's agent that there were six light bulbs burnt out. The tenant is required to replace burnt out lights during the tenancy. I find the tenant breached the Act, when they failed to replace the light bulbs during their tenancy. I find the landlord is entitled to recover the cost of replacement bulbs in the amount of **\$19.99**.

I find that the landlord has established a total monetary claim of **\$2,331.43** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$675.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,656.43**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: August 07, 2019

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Residential Tenancy Branch