



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

FFL MNDL-S

### Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agents. The agent JS (the "landlord") primarily spoke on behalf of the corporate landlord. The named tenant CJA appeared, stated that the other named co-respondent was deceased, but they were authorized to speak on behalf of the estate.

As both parties were represented service of documents was confirmed. The parties each confirmed receipt of the other's materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the security deposit for this tenancy?

Is the landlord entitled to recover the filing fee from the tenants?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began in March, 2008 and ended April 30, 2019. There was a security deposit of \$362.50 and pet damage deposit of \$362.50 paid at the start of the tenancy and still held by the landlord.

The tenant has not provided a forwarding address in writing to the landlord. The tenant testified that they chose not to participate in a move out inspection at the end of the tenancy. The tenant testified that they made numerous complaints about the condition of the suite to the landlord throughout their tenancy.

The landlord submits that the rental unit was left in a state of disarray requiring considerable cleaning and work at the end of the tenancy. The landlord seeks a monetary award of \$6,360.63 for the following items:

<b>Item</b>	<b>Amount</b>
Garbage Removal	\$630.00
Drape Replacement	\$508.67
Floor Replacement	\$2,672.97
General Repair Work	\$716.80
Cleaning Services	\$358.40
Supplies	\$689.79
Appliance Replacement	\$784.00
<b>TOTAL</b>	<b>\$6,360.63</b>

The landlord submitted into evidence a condition inspection report, photographs of the suite and various receipts showing the expenditures incurred.

### 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 prove

the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* 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.

Residential Tenancy Policy Guideline 40 provides a general guide for determining the useful life of building elements. The Guideline states that an 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”. In the present case, because of the length of this tenancy I find that many of the elements claimed by the landlord have exceeded the expected useful life. As a result, I find that the tenant is only responsible for the damage or loss to the rental unit in excess of the expected wear.

I find that items such as the flooring, drapery and walls have exceeded the expected useful life of such items during the 11-year tenancy according to the Policy Guideline, and as such I find their replacement to simply be due to age and not attributable to the tenants. I therefore dismiss the portion of the landlord’s claim arising from these items including the purchase of supplies and labour listed under repairs in their monetary worksheet.

I accept the landlord’s evidence that the tenant left items in the rental unit at the end of the tenancy requiring disposal and that the suite was in a condition requiring cleaning work. I accept the evidence of the landlord that the cost for cleaning work and disposal of items is \$988.40 and issue a monetary award in that amount accordingly.

The landlord claims the cost for replacement of appliances in the rental unit specifically the refrigerator and stove. The move out condition inspection report notes that the condition of these items to be “Very Bad”. The tenant submits that these units were not functioning during the tenancy and the landlord was made aware of their condition. The tenant submitted into evidence a letter dated July 26, 2013 complaining about the refrigerator.

I do not find the tenant’s submission that the appliances were malfunctioning throughout the tenancy to be believable or sufficiently supported in evidence. I find that a single letter issued over 6 years ago to be insufficient to show that the refrigerator has been broken for the duration of the tenancy. It strains credulity that the tenant would not have made any follow up requests or that there would not be more action taken if a major

appliance such as a refrigerator was not functioning for an extended period of time. I find the landlord's submission that the appliances were in good working condition to be far more credible and believable.

I find that the appliances were of an age that there could have been several additional years of usage were it not for the tenants. I accept the evidence that the appliances needed to be replaced at the end of the tenancy and that the need for replacement arises due to the tenancy. I accept the evidence of the landlord that the replacement costs of the appliances is \$784.00 and issue a monetary award in that amount accordingly.

As the landlord's application was successful in parts the landlord is authorized to recover their filing fee from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit, pet damage deposit and interest in the amount of \$9.09, calculated by the Residential Tenancy Deposit Interest calculation formula in partial satisfaction of the monetary award issued in the landlord's favour.

### Conclusion

I issue a monetary award in the landlord's favour in the following terms:

Item	Amount
Garbage Removal	\$630.00
Cleaning Services	\$358.40
Appliance Replacement	\$784.00
Filing Fee	\$100.00
Less Security Deposit	-\$362.50
Less Pet Damage Deposit	-\$362.50
Less Deposit Interest	-\$9.09
<b>TOTAL</b>	<b>\$1,138.31</b>

The landlord is provided with the Orders in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with the Order, the 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: October 3, 2019

---

Residential Tenancy Branch