



# 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      MNDL-S, FFL

### Introduction

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

- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant's advocate also attended the hearing.

Both parties agree that the landlord served the tenant with the landlord's application for dispute resolution via registered mail. I find that the tenant was served with the landlord's application for dispute resolution in accordance with section 89 of the *Act*.

### Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 1, 2017 and ended on October 31, 2019. Monthly rent in the amount of \$1,614.00 was payable on the first day of each month. A security deposit of \$787.50 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant testified that she provided the landlord with her forwarding address in writing on October 31, 2019. The landlord testified that she received the tenant's forwarding address on November 13, 2019. The landlord filed for dispute resolution on November 8, 2019.

Both parties agree that a joint move in condition inspection report was completed and signed by both parties on November 1, 2017. Both parties agree that a move out condition inspection was conducted by both parties on October 31, 2019 but the tenant refused to sign the move out condition inspection report because she did not agree with its contents. The move in and move out condition inspection reports were entered into evidence.

The landlord is seeking the following damages arising out of this tenancy:

<b>Item</b>	<b>Amount</b>
Cleaning	\$180.00
Fire place cleaning	\$35.00
Keys	\$80.00
Painting	\$185.00
Filing fee	\$100.00
<b>Total</b>	<b>\$580.00</b>

### *Cleaning*

The landlord testified that the tenant did not clean the oven, the stove, the fridge, the bedroom windows, and the balcony. The landlord testified that it took in house cleaning staff four hours to finish cleaning the subject rental property. The landlord entered into evidence an inhouse invoice for cleaning in the amount of \$180.00.

The landlord entered into evidence photographs of an open oven door. The door appears to have interior staining, commensurate with the apparent age of the oven. The oven appears to have been cleaned. The landlord did not enter photographs of the fridge. The landlord entered into evidence photographs of the dismantled element on the stove which shows a ring-shaped mark where the metal ring around the element sits. The landlord entered into evidence photographs of the bedroom window. The bedroom window appears dirty; however, it is not possible to determine if the dirt is on the inside or outside of the window. The photographs of the balcony show that it was not swept.

The tenant testified that she and five to six other people cleaned the subject rental property for five to six hours. The tenant testified that she cleaned the fridge, stove, oven, walls, floors, and cupboards. The tenant entered into evidence over 30 photographs of the interior of the subject rental property after it was cleaned including photographs of fridge, stove, oven, walls, floors, and cupboards. The photographs show that the subject rental property was clean. No photographs of the balcony were entered by the tenant.

### *Fireplace Cleaning*

The landlord testified that all tenants are charged a \$35.00 fireplace cleaning fee when they move out. The landlord testified that she is seeking this amount from the tenant. The landlord testified that the tenancy agreement does not mention the \$35.00 fee. The landlord entered into evidence an inhouse invoice for fireplace cleaning in the amount of \$35.00.

The tenant testified that she never used the fireplace and so it was not dirty, and she should be not charged for its cleaning.

### *Keys*

The landlord testified that the tenant returned all keys from the subject rental property on November 13, 2019 except the mail key which was never returned.

The landlord testified that the tenant was supposed to return her keys on October 31, 2019 but did not do so which necessitated new keys being cut. The landlord testified that she purchases keys in bulk and does not have an invoice for each key but that the total cost to replace the keys was \$80.00. The landlord entered into evidence an inhouse invoice dated November 8, 2019 for keys in the amount of \$80.00.

The tenant testified that she returned all keys to the subject rental property including the mail key on November 13, 2019.

### *Painting*

The landlord testified that the subject rental property required painting after the tenant moved out because the tenant damaged the walls. The landlord testified that there were holes in the walls of the hallways, the bedroom door frame, and the living room walls. The landlord testified that the tenant put a lock on the bedroom door which left holes in the door. The landlord entered into evidence photographs of walls throughout the subject rental property which show a few dents and marks on the walls. The landlord entered into evidence photographs showing some holes in a door frame.

The landlord entered into evidence an invoice for painting the subject rental property in the amount of \$175.00 plus 5% GST for a total of \$183.75. The landlord's monetary claim worksheet states that the landlord is seeking to recover \$185.00 for painting. The landlord testified that the discrepancy between the invoice and the claim is to account for the cost of paint which was not supplied by the painter.

The landlord testified that the subject rental property was painted between October 31, 2017 and November 1, 2017, just before the tenant moved in.

The tenant testified that she took good care of the subject rental property and that she didn't leave any big holes in the walls. The tenant's advocate submitted that the few marks and dents left on the walls by the tenant was caused by reasonable wear and tear and so the tenant is not responsible for the cost of painting.

## Analysis

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the landlord must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the tenant's claim fails.

## *Cleaning*

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the photographic evidence of both parties, I find that the tenant left the rental unit reasonably clean. I find that the photographic evidence shows that the fridge, stove, oven, walls, floors, and cupboards were reasonably clean. I find that the level of clean being sought by the landlord goes beyond what is reasonable in the circumstances. I find that the tenant failing to sweep the patio is minor and does not breach section 37 of the *Act*.

Residential Tenancy Policy Guideline #1 (PG#1) is intended to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property and manufactured home parks, and obligations with respect to services and facilities.

PG#1 states that the tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mould. The tenant is responsible for cleaning the inside and outside of the balcony doors, windows and tracks during, and at the end of the tenancy. The landlord is responsible for cleaning the outside of the windows, at reasonable intervals. I find that the landlord has not proved,

on a balance of probabilities, that the dirt on the windows was inside rather than outside dirt.

As I have found that the tenant did not breach section 37 of the *Act*, I dismiss the landlord's claim for cleaning.

### *Fireplace Cleaning*

PG#1 states that the tenant is responsible for cleaning the fireplace at the end of the tenancy if he or she has used it.

I accept the tenant's undisputed testimony that she did not use the fireplace. I therefore find, pursuant to PG #1, the landlord's claim for fireplace cleaning is dismissed.

### *Keys*

Section 37(2)(b) of the *Act* states:

When a tenant vacates a rental unit, the tenant must 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.

Pursuant to the evidence of both parties, I find that the tenant vacated the subject rental property on October 31, 2019 and provided keys to the landlord on November 13, 2019.

I find that the tenant breached section 37(2)(b) by failing to provide the landlord with the keys on October 31, 2019. I find that it was reasonable for the landlord to get new keys for the subject rental property and a new mail key as the landlord required immediate access to the subject rental property. I find that which keys were provided on November 13, 2019 is not relevant as the tenant was required to give the keys to the landlord on October 31, 2019 which she failed to do. I find that in getting new keys, the landlord suffered a loss. I find that it is common practice for landlords to purchase materials such as keys in bulk and that it is reasonable for the landlord not to have an invoice each individual key.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I find that the

landlord is entitled to nominal damages in the amount of \$80.00 for the issuance of new keys for the subject rental property.

### *Painting*

PG #1 states that the tenant is required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act. Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.

Based on the testimony and evidence of both parties, I find that the subject rental property was in reasonably good condition when the tenant moved out and that the dings and other marks on the walls and doors are minor and constitute regular wear and tear. I therefore dismiss the landlord's claim for the cost of painting.

As the landlord was partially successful in her application for dispute resolution, I find that she is entitled to recover \$50.00 of her application fee from the tenant, pursuant to section 72 of the *Act*.

### *Security Deposit.*

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
  - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
  - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security deposit within 15 days of the end of the tenancy pursuant to section 38(a) and 38(b) of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$130.00 from the tenant's security deposit. I Order the landlord to return the remaining \$657.50 from the tenant's security deposit to the tenant.

### Conclusion

I issue a Monetary Order to the tenant under the following terms:

Item	Amount
Security deposit	\$787.50
Less nominal damages- keys	-\$80.00
Less filing fee	-\$50.00
<b>TOTAL</b>	<b>\$657.50</b>

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: March 26, 2020

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Residential Tenancy Branch