



# 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      MNRL-S, MNDL-S, MNDCL-S, FFL

### Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent ("landlord") and the two tenants, male tenant ("tenant") and "female tenant" (collectively "tenants") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 40 minutes. The landlord confirmed that she had permission to represent the landlord company named in this application at this hearing.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord confirmed receipt of the tenants' evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were duly served with the landlord's application and the landlord was duly served with the tenants' evidence.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit, and for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' security deposit?

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

### Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on November 1, 2019 and ended on December 31, 2019. Monthly rent in the amount of \$1,800.00 was payable on the first day of each month. A security deposit of \$900.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties for a fixed term from November 1, 2019 to October 31, 2020. A move-in condition inspection report was completed by both parties. A move-out condition inspection report was completed by the landlord only, without the tenants. The landlord only provided one opportunity to conduct a move-out inspection with the tenants and it was not on the approved RTB form. The landlord did not have written permission from the tenants to keep any part of their security deposit. The landlord's application to retain the tenants' security deposit was filed on January 13, 2020. A written forwarding address was received by the landlord from the tenants on December 31, 2019, by way of a letter that was left in the landlord's office mailbox.

The landlord seeks a monetary order of \$2,875.00 plus the \$100.00 application filing fee. The landlord claimed that she was no longer seeking the \$25.00 late fee for January 2020 rent. The tenants dispute the landlord's entire application.

The landlord seeks \$1,800.00 for a loss of rent for January 2020. She said that the tenants breached their fixed term tenancy agreement and moved out early. She claimed that the tenants provided notice on December 27, 2019 to move out on December 31, 2020, so they did not give at least one full month's notice. She stated that she did not know when new tenants moved in, she cannot guarantee that it was not in January 2020, and the landlord did not submit any documentary proof of the landlord's efforts to re-rent the unit. She maintained that the landlord adequately dealt with the bed bug and cockroach issues raised by the tenants, inside the rental unit, but the tenants refused to cooperate with the landlord's pest control companies.

The landlord seeks \$900.00 in liquidated damages because the tenants breached their fixed term tenancy agreement. She stated that this provision was contained in

paragraph 4 of the parties' written tenancy agreement. She maintained that she could not show how this amount was a genuine pre-estimate of the landlord's loss.

The landlord seeks \$120.00 to clean the balcony, stove, washroom, and floors, \$20.00 for cleaning materials, and \$35.00 to clean the fireplace at the rental unit. The landlord provided an invoice from the landlord's private maintenance company for \$175.00 total, stating that \$140.00 was charged for cleaning of the unit and material and \$35.00 was for fireplace cleaning. She said that the cleaning was three hours at \$40.00 per hour and the cleaning materials were 20% of \$120.00 at \$20.00, even though the number was supposed to be \$24.00. The landlord claimed that there was no receipt to show that the above invoice was paid. She agreed that there was no breakdown of the cleaning on the invoice, such as the hourly rate, how many hours, how many people cleaned, or what areas were cleaned. She agreed that the landlord did not provide photographs of the condition of the rental unit upon move-in or move-out.

The tenants dispute the landlord's application. The tenant claimed that the tenants cleaned the rental unit when they moved out, including the fireplace, and the tenants provided photographs of same. The tenant stated that the tenants did not pay for January 2020 rent because they moved out on December 31, 2019. He maintained that the tenants moved out earlier than the fixed term because there were cockroaches and bed bugs inside the rental unit and the landlord failed to address these issues. He testified that the landlord had three people come in from pest control, who sprayed the rental unit, checked the tenants' bed, did not see any bed bugs, so nothing else was done. He stated that the tenants killed the one bed bug they found and provided photographs of same. He said that the landlord blamed the tenants for bringing in the bed bugs, even though there was already a problem with bed bugs inside the rental building from before the tenants moved in, which he said the landlord failed to tell the tenants. He confirmed that the landlord failed to comply with section 32 of the *Act* in maintaining the rental unit in a proper state of decoration or repair, so the tenants had to move out. He claimed that the tenants provided verbal notice on December 24, 2019 and a written letter on December 31, 2019 to the landlord to move out.

### Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

### Rent Loss

I find that the landlord and tenants entered into a fixed term tenancy for the period from November 1, 2019 to October 31, 2020. Both parties signed the written tenancy agreement and a copy was provided for this hearing.

Subsection 45(2) of the *Act* sets out how a tenant may end a fixed term tenancy:

*A tenant may end a fixed term 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,*

*(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*

*(c) 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.*

The above provision states that the tenants cannot give notice to end the tenancy before the end of the fixed term. If they do, they may have to pay for rental losses to the landlord. In this case, the tenants ended the tenancy on December 31, 2019, prior to the end of the fixed term on October 31, 2020. I find that the tenants breached the fixed term tenancy agreement. As such, the landlord may be entitled to compensation for losses it incurred as a result of the tenants' failure to comply with the terms of the tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application for January 2020 rent loss of \$1,800.00, without leave to reapply. I find that the landlord failed to provide documentary evidence including copies of rent advertisements, to show when it was advertised for re-rental, what details were given, or how long the unit was advertised for. The landlord also failed to provide documentary evidence to indicate how many inquiries were made for re-rental, how many showings were done, and when they were done.

I find that the landlord failed to show how it properly mitigated losses in efforts to re-rent the unit. The landlord did not even know when the rental unit was re-rented to new tenants, stating that it could have been in January 2020.

### Liquidated Damages

Residential Tenancy Policy Guideline 4 provides information regarding liquidated damages. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

I find that the cost of re-renting a unit to new tenants is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants, numerous times. In this case, the landlord did not provide copies of any advertisements posted to re-rent the unit. The landlord did not know how many inquiries were answered for the unit or how many showings of the unit were done. The landlord also did not know how the above amount was a genuine pre-estimate of the loss.

Although the tenants vacated the rental unit prior to the end of their fixed term on October 31, 2020, I find that the landlord did not show how the \$900.00 claimed for liquidated damages in paragraph 4 of the tenancy agreement was a genuine pre-estimate of the loss. For the above reasons, I dismiss the landlord's claim of \$900.00 for liquidated damages without leave to reapply.

### Cleaning and Filing Fee

I dismiss the landlord's claims for \$175.00 total for cleaning and materials, without leave to reapply. The landlord did not provide a receipt to show payment of their invoice. The

landlord's invoice does not include a breakdown the hourly rate, how many hours, how many people cleaned, or what areas were cleaned. The landlord did not provide photographs of the condition of the rental unit at move-out, to show that cleaning was required. The tenants did not attend the move-out condition inspection with the landlord, who unilaterally recorded its own findings. The tenants provided photographs to show that they cleaned the rental unit when they moved out.

As the landlord was unsuccessful in this application, I find that it is not entitled to recover the \$100.00 filing fee from the tenants.

### Security Deposit

The landlord continues to hold the tenants' security deposit of \$900.00. Over the period of this tenancy, no interest is payable on the tenants' security deposit. Although the tenants did not apply for the return of their deposit, I must deal with the deposit if the landlord has applied to retain it, as per Residential Tenancy Policy Guideline 17.

Accordingly, I order the landlord to return the tenants' entire security deposit of \$900.00 to the tenants within 15 days of receiving this decision. The tenants are provided with a monetary order for same.

### Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$900.00 against the landlord. 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: June 05, 2020

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Residential Tenancy Branch