



# 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, MNRL-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 money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

Both parties appeared at the hearing. The landlord had an agent appear on their behalf. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue to be Decided

Is the landlord entitled to a monetary award for loss and damages arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on December 16, 2019 and ended on April 6, 2020. The landlord testified the monthly rent was \$1670.00 and that the tenants paid a security deposit of \$835.00 and a pet deposit of \$835.00. The landlord still holds both deposits. The landlord testified that the tenants advised that as a result of the pandemic they needed to end their one-year fixed term tenancy early. The landlord testified that the suite remained empty for 24 days and is seeking the pro rated amount of rent for those days in the amount of \$1280.33.

The landlord testified that since there is a liquidated damages clause in the agreement, the tenant must pay a fee of \$835.00. The landlord testified that the tenants didn't use the parking spot and that they should pay the monthly rate of \$100.00 as it was in their agreement. The landlord testified that the tenants damaged a bathroom sink that needed to be replaced and the unit needed more cleaning after the tenants vacated.

The landlord is applying for the following:

1.	Unpaid Rent April (prorated)	\$1280.33
2.	Replace broken bathroom sink	414.03
3.	Liquidated Damages	835.00
4.	Parking for April	100.00
5.	Cleaning	48.00
6.	Filing Fee	100.00
7.		
8.		
9.		
10.		
	<b>TOTAL</b>	<b>\$2777.36</b>

The tenant gave the following testimony. The tenant testified that she agrees that she should pay for the unpaid rent and the replace cost of the sink for parts alone. The tenant testified that at the move in condition inspection the landlord was very casual and told her not to bother with writing minor deficiencies, but at the move out inspection, the landlord was far more meticulous and careful when checking the unit. The tenant testified that she left the unit cleaner than when she moved in. The tenant testified that the liquidated damages and parking claim are attempts by the landlord to make more money at a very difficult time for many people without any basis or merit to those claims.

### 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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. I address the landlords claim and my findings as follows.

#### Unpaid Rent – \$1280.33

The tenant agrees with this claim, accordingly; the landlord is entitled to \$1280.33.

#### Bathroom sink – \$414.03

The tenant wasn't sure when the damage occurred to the sink but stated "I guess I did it". The landlord provided a copy of the bill, a photo and the condition inspection report to support this claim. The landlord gave evidence that the sink was seven years old when it was replaced. Applying Policy Guideline 40; "useful life of building elements", a sink is listed at 20 years. I grant the landlord a pro rated amount of the \$88.42 for the cost of the sink in the amount of \$57.47 plus the cost of installation of \$325.61 for a total award of \$383.08.

#### Liquidated Damages - \$835.00

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, I find that the landlord did not show how the \$835.00 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 \$835.00 for liquidated damages without leave to reapply.

#### Parking \$100.00

The landlord was seeking the cost of parking when the tenant no longer resided in the building. Parking is an additional benefit a tenant may obtain on a month to month basis but is not a mandatory clause of a tenancy. The landlord has failed to provide sufficient evidence to show that the tenant is responsible for this cost and I therefore dismiss this portion of their application.

#### Cleaning – \$48.00

The landlord did not provide a bill to verify and support the amount as claimed. The tenant disputed this claim as she stated the unit was left in a very clean condition. Based on the insufficient evidence before me, I dismiss this portion of the landlords claim.

The landlord is entitled to the recovery of the \$100.00 filing fee.

#### Conclusion

The landlord has established a claim for \$1763.41. I order that the landlord retain the \$1670.00 in pet and security deposits in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$93.41. This order may be filed in the Small Claims 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: August 17, 2020

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Residential Tenancy Branch