



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTAL 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* ("Act") for:

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 18 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed that she was the residential manager for the landlord company named in this application and that she had permission to speak on its behalf at this hearing.

The landlord stated that the tenant was served with a copy of the landlord's application for dispute resolution hearing package on December 16, 2020, by way of registered mail to the tenant's forwarding address. The landlord provided a copy of the December 3, 2020 email with the tenant's forwarding address. The landlord provided a Canada Post receipt and confirmed the tracking number verbally during the hearing. She stated that the tenant picked up the mail package on December 22, 2020.

In accordance with sections 89 and 90 of the Act, I find that the tenant was deemed served with the landlord's application on December 21, 2020, five days after its registered mailing to the tenant's forwarding address.

The landlord stated that the tenant was served with a copy of the landlord's evidence package, including a digital USB drive, on March 25, 2021, by way of registered mail to the tenant's forwarding address. The landlord provided a Canada Post receipt and confirmed the tracking number verbally during the hearing. She stated that the tenant did not pick up the mail, but it is ready for pick up at the post office.

In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's evidence package on March 30, 2021, five days after its registered mailing to the tenant's forwarding address.

The landlord confirmed that she provided an email to the tenant on April 8, 2021, to ask whether the tenant could view the digital USB evidence. She said that the tenant did not respond to this email.

During the hearing, I explained the hearing process to the landlord. The landlord had an opportunity to ask questions. The landlord stated that she wanted to proceed with the hearing, and she did not make any adjournment or accommodation requests.

#### Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to retain the tenant's 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 landlord's documentary evidence and the testimony of the landlord, 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.

The landlord testified regarding the following facts. This tenancy began on March 1, 2013. The tenant vacated the rental unit by October 26, 2020. A written tenancy agreement was signed by both parties. Monthly rent in the amount of \$1,455.00 was payable on the first day of each month. A security deposit of \$625.00 was paid by the tenant and the landlord continues to retain this deposit. A move-in condition inspection report was completed with both parties for this tenancy. A move-out condition

inspection report was completed with the landlord only, not the tenant present. The landlord did not provide the tenant with an opportunity to perform a move-out condition inspection using the approved RTB form. The tenant provided a forwarding address to the landlord on December 3, 2020, by way of email. The landlord had written permission to keep carpet cleaning from the tenant's security deposit, which was written on a note and left for the landlord. The minimum amount that the landlord charges for carpet cleaning to the tenant is \$140.00. The landlord's application to retain the tenants' security deposit was filed on December 10, 2020.

The landlord seeks a monetary order of \$1,122.05 plus the \$100.00 application filing fee. The landlord seeks to retain the tenant's security deposit of \$625.00 towards the above monetary order. During the hearing, the landlord read out the damage claims made on the monetary order worksheet but did not confirm any amounts for these claims. She indicated that the evidence was attached to the application. She did not provide any other testimony at this hearing.

### Analysis

The following Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") are applicable to this proceeding and state, in part:

*7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party's agent...*

...

*7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

*7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

I find that the landlord did not sufficiently present the landlord's claims or evidence, as required by Rule 7.4 of the RTB *Rules*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*.

During the hearing, the landlord failed to explain the specific monetary claim details and the amounts for each claim. The landlord had ample opportunity to present this application, as the tenant did not appear at this hearing. I asked the landlord whether she had any other information she wanted to present or add during this hearing, but she declined to do so. The hearing only lasted 18 minutes because the landlord did not explain the damages, how the tenant was responsible for these damages, and she did not go through any of the documents submitted by the landlord.

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. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenant 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.

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of the landlord.

The landlord did not review any specific claim details or monetary amounts, as noted in the monetary order worksheet that she provided for this hearing. According to the landlord's monetary order worksheet, the landlord claimed the following amounts, as noted below.

I dismiss the landlord's application of \$147.00 for carpet cleaning, \$119.66 for blinds, \$368.00 for cleaning and repairs, \$27.64 for bulbs and floor registers, \$183.75 for duct cleaning, \$178.50 for furniture and garbage removal, \$97.50 for door frame/casing, totalling \$1,122.05, without leave to reapply. The landlord did not complete a move-out condition inspection report with the tenant, to show the condition of the rental unit at the end of the tenancy.

The landlord did not indicate what work was done, when the work was done, who it was done by, how many people did the work, what the rate was per hour or per task, or other such information. The landlord did not indicate any of the above amounts during the hearing. The landlord did not go through any invoices, estimates, photographs or

any documents during this hearing. The invoices and estimate supplied by the landlord indicate balances due; the landlord did not provide any receipts to confirm that any amounts were actually paid by the landlord to repair any damages related to this rental unit.

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

### Security Deposit

The landlord continues to hold the tenant's security deposit of \$625.00. Over the period of this tenancy, no interest is payable on the deposit. I find that the tenant provided a written forwarding address to the landlord on December 3, 2020, by way of email. I find that the landlord was sufficiently served as per section 71(2)(c) of the *Act*, with the tenant's forwarding address by email. Although email was not a permitted service method under section 88 of the *Act* at that time, the landlord received the tenant's forwarding address and used it to serve this application and evidence to the tenant. I find that the landlord applied to retain the security deposit within 15 days of December 3, 2020, as this application was filed on December 10, 2020.

I find that the landlord did not have written permission to keep \$140.00 for carpet cleaning from the tenant's security deposit. The landlord provided a copy of the note she said was given to her by the tenant, which does not indicate any amount that the landlord can retain for carpet cleaning.

The landlord's right to retain the tenant's security deposit for damages was extinguished for failure to provide an opportunity to complete a move-out condition inspection, using the approved RTB form, as required by section 36(2)(a) of the *Act* and section 17(2)(b) of the *Residential Tenancy Regulation*. However, the landlord also applied for other costs, aside from damages, including cleaning, furniture and garbage removal.

In accordance with section 38 of the *Act*, I find that the tenant is entitled to the return of her full security deposit of \$625.00 from the landlord. The tenant is provided with a monetary order for same. Although the tenant did not apply for her security deposit return, I am required to consider it on the landlord's application to retain it, as per Residential Tenancy Policy Guideline 17.

Conclusion

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

I issue a monetary order in the tenant's favour in the amount of \$625.00 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: April 20, 2021

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Residential Tenancy Branch