



# 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 was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damage to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants did not attend the hearing. I accept the Landlord’s evidence that each Tenant was served with the application for dispute resolution, notice of hearing and initial evidence (the “Materials”) by registered mail on December 18, 2020 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenants are deemed to have received the Materials on December 23, 2020. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### **Preliminary Matter**

The Landlord’s application sets out a total damage claim of \$160.00 for repairs to the walls left un-sanded and for a plumbing visit for a leaking washing machine. The Landlord provided a monetary order worksheet setting out the costs of \$824.25 for these repairs. The Landlord served this monetary order worksheet with the application. The Landlord then provided a second monetary order worksheet setting out a total claim

of \$1,417.05 for the original repairs plus additional costs for other repairs not detailed on the application. The Landlord did not give the Tenants a copy of this monetary worksheet. On March 3, 2021 the Landlord submitted a third monetary order worksheet setting out a total claim of \$1,561.05. The Landlord served this evidence along with receipts to the Tenants. The Landlord did not make any amendment to its application to add particulars of the additional damages or to increase the costs being claimed.

Rule 2.2 of the Residential Tenancy Branch Rules of Procedure provides that claims are limited to what is stated in the application. Although the application sets out a lower figure than the original monetary order worksheet, and without any submissions from the Tenants I consider that the provision of a greater amount in the original monetary order worksheet given at the same time of the application provides the Tenants with sufficient notice of the claim being made in the amount of \$824.25. However, the Landlord is restricted to this amount as the application was not thereafter amended to raise the claimed amount.

#### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

#### Background and Evidence

The tenancy under written agreement started on May 1, 2013 and ended on November 30, 2020. At the outset of the tenancy the Landlord collected \$837.50 as a security deposit. The Parties mutually conducted both a move-in and move-out inspection with completed reports copied to the Tenants. The Tenants provided their forwarding address on the move-out report dated November 30, 2020.

The Landlord states that the Tenants left patched areas on the walls that were not sanded. The Landlord states that the Tenants only patched some of the numerous nail holes. The Landlord states that the walls were last painted prior to the onset of the tenancy. The Landlord claims \$761.25 and provides an invoice.

The Landlord states that about 4 or 5 days after the next tenants had moved into the unit and after they had used the washing machine once, it leaked, and they called the Landlord. The Landlord confirms that the plumbing invoice notes that no repairs were made with only the recommendation that the laundry detergent be changed. The Landlord believes that the Tenants caused the Landlord to incur the plumbing cost as the Tenants had reported a washing machine leak about a week prior to their move-out however the Landlord did not attend the unit at the time as the Tenants told the Landlord that the issue was resolved and that they did not wish to have the Landlord enter the unit due to covid precautions. The Landlord claims \$63.00.

### Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Policy guideline #40 provides that the useful life of interior paint is 4 years. Given the Landlord's evidence of the previous paint age, I find that the paint on the walls were well past their useful life at the end of the tenancy and that the Landlord is therefore responsible for any maintenance or repair costs in relation to the paint. While the Tenants may have caused extra labour costs for the Landlord to sand the walls before painting, the invoice does not set out any identifiable portion of these costs. Further the costs being claimed includes costs to paint the ceilings and there is no evidence of any damage done to the ceilings by the Tenants. For these reasons I find that the Landlord has not substantiated the claim for costs of \$761.25 and I dismiss this claim.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party. Given that the Landlord did not inspect the washing machine before the next tenants occupied the unit, as the plumber was called to inspect the machine for a leak after the next tenants used

the washing machine and as the only evidence of causation of the leak was the use of the detergent with no evidence of whose detergent caused the leak, I find that the Landlord has not substantiated that the Tenants caused the cost claimed. I dismiss the claim for \$63.00.

As the Landlord's claims have not been successful, I find that the Landlord is not entitled to recovery of the filing fee and in effect the application is dismissed in its entirety. I order the Landlord to return the security deposit of \$837.50 plus zero interest forthwith to the Tenants.

#### Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$837.50**. If necessary, 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 Act.

Dated: April 21, 2021

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Residential Tenancy Branch