



# 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 FFL

### Introduction

The landlord seeks compensation from the tenant for loss of rent, for costs related to cleaning and painting, and for the filing fee, pursuant to sections 67 and 72 of the *Residential Tenancy Act* ("Act").

Both parties attended the hearing on May 14, 2021. No issues of service were raised by the parties, and Rules 6.10 and 6.11 of the *Rules of Procedure* were addressed.

### Issue

Is the landlord entitled to compensation?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began on August 1, 2019 and ended on December 31, 2020. Monthly rent, which was due on the first of the month, was \$1,200.00, and the tenant paid a security deposit of \$600.00. The security deposit is currently held in trust by the landlord pending the outcome of this application. A copy of a written tenancy agreement was in evidence.

The landlord seeks \$1,200.00 for the loss of rent for January 2021. According to the landlord's agent, the tenant gave notice on December 1, 2020 to end the tenancy effective December 31, 2020. (I should note that the tenancy was, at the time the tenant gave notice to end the tenancy, a month-to-month tenancy.)

While the landlord started showing the rental unit almost immediately after receiving the tenant's notice, they were ultimately unsuccessful in securing a new tenant for January 2021. A new tenant eventually began occupancy for February 2021. As such, the landlord seeks \$1,200.00 for the loss of rent. A copy of the tenant's notice to end tenancy was submitted into evidence.

The landlord also seeks \$694.91 for various costs related to cleaning (\$240.00), painting (\$204.75), removal of couches that were abandoned by the tenant (\$178.50), and additional painting expenses (\$71.66). Invoices and receipts to support these claims were submitted into evidence by the landlord. Also submitted into evidence, and referred to during the hearing by the landlord, is a Condition Inspection Report, and several photographs of the rental unit.

The tenant testified that it was her understanding that, while they did not give notice strictly as required a minimum one month before the end of the monthly term of the tenancy, that they did so not even 12 hours late. Apparently, the tenant spoke to "quite a lot of people" about how to give a notice to end a tenancy. This was, she explained, her first time renting an apartment and she did not have much idea about it; her giving the notice a day late was not intentional. She "tried my best to do it as soon as possible."

Regarding the claim for cleaning, the tenant simply remarked that "it was not that bad," but she also conceded that perhaps some cleaning still had to be done.

In summary, the tenant expressed concern for the total amount that she might be liable for, explaining the financial difficulty in paying for the claims. The tenant has been without work since January 2021 and was only recently able to obtain a work permit effective May 1, 2021.

It should be noted that the tenant did not submit any documentary evidence. (However, I do not draw any adverse findings from this omission.)

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

### **Claim for Loss of Rent**

Section 45(1) of the Act sets out the legal requirements for a tenant ending a periodic, or month to month, tenancy:

A tenant may end a periodic 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, and
- (b) 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.

In this case, the tenant gave notice to end the tenancy on December 1, 2020. If the tenant wanted to end the tenancy effective December 31, the law required her to provide notice no later than November 30, 2020. What this means is that the tenancy effectively ran until the end of January 2021 unless the landlord was able to find a new tenant to move in on January 1. They were unable to secure a new tenant. But for the tenant's failure to give notice as required by the Act, the landlord would not have suffered a loss of rent for a month.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for a loss of rent for January 2021 in the amount of \$1,200.00.

### **Claim for Cleaning, Painting, and Couches Removal**

Section 37 of the Act requires a tenant to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear when they vacate.

Based on the information contained in the landlord's Condition Inspection Report, taking into consideration the parties' testimony, and having reviewed the photographs submitted, I must conclude that the tenant breached section 37(2) of the Act.

But for the tenant's breach of this section of the Act, the landlord would not have incurred the various costs for which it is now claiming. While I agree with the tenant's assertion that the rental unit, in terms of cleanliness, "it was not that bad," it is clear that neither was the rental unit all that good in terms of being cleaned. Further, the tenant cannot simply abandon couches behind, leaving the landlord to pay for their removal.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for various cleaning, painting, and couch removal costs.

### **Claim for Application Filing Fee**

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord succeeded in their application, I grant them \$100.00 in compensation to cover the cost of the filing fee.

### **Summary of Award, Retention of Security Deposit, and Monetary Order**

The landlord is awarded a total of \$1,994.91.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." As such, I order the landlord to retain the tenant's security deposit of \$600.00 in partial satisfaction of the above-noted award.

I grant the landlord a monetary order in the amount of \$1,394.91, representing the difference between the award and the amount of the security deposit. This monetary order is issued in conjunction with this decision, to the landlord.

While it is not lost on me that this is a significant amount, how the tenant may go about paying the landlord is a matter that I will leave to the parties to work out.

Conclusion

The landlord's application is granted.

I hereby grant the landlord a monetary order in the amount of \$1,394.91, which must be served on the tenant. If the tenant fails to pay the landlord the amount owed, the landlord may file and enforce the order in the Provincial Court of British Columbia.

The landlord is ordered to retain the tenant's security deposit pursuant to section 38 of the Act.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: May 17, 2021

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Residential Tenancy Branch