



# 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      MNDCL-S, FFL, MNDCT, FFT

### 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 a portion of the tenant's security deposit in satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns.

The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well,

all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage 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 recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary order for compensation for loss or damage under the Act, regulation, or tenancy agreement?

Is the tenant entitled to the return of their security deposit?

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

#### Background and Evidence

Both parties agreed that the tenancy began on September 1, 2018 and ended on January 28, 2021. The monthly rent of \$1306.00 was due on the first of each month. The tenants paid a security deposit of \$637.50 which the landlord still holds.

The landlord gave the following testimony. The landlord testified that the tenants damaged some blinds as some of the slats were pulled out which cost the landlord \$80.00 to repair. The landlord testified that the tenants also damaged a wall that required repairs and spot painting of \$140.00. The landlord seeks those costs along with the recovery of the \$100.00 filing fee for a total claim of \$320.00.

The landlord testified that she advised the tenants in advance to address these two issues; if they had, the landlord would not have filed this application. The landlord testified that the tenants were required to have home insurance as part of their tenancy agreement. The landlord testified that the tenants did not advise her of their request for compensation until they filed their application.

The tenant gave the following testimony. The tenant testified that she feels the repair costs the landlord seeks are high and that they could have fixed those items at a lower price. The tenant testified that they were without heat in March 2020 for 7 days. The tenant testified that due to a burst pipe in November 2020, the unit was uninhabitable

for 7 days. The tenant testified that she seeks a pro rated daily rate of the monthly rent payable as compensation;  $\$45.00 \times 14 \text{ days} = \$630.00$ . The tenant also seeks the return of their security deposit and the recovery of the \$100.00 filing fee for a total monetary request of \$1367.50.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

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.

### Landlords Claim

The landlord provided receipts, photos and the condition inspection report to support their claim for \$80.00 for blinds and \$140.00 for wall repair and paint. Based on the documentary evidence before me, the landlord has satisfied me of the four elements listed above, accordingly; I find that the landlord is entitled to \$220.00. I also find that the landlord is entitled to the recovery of the \$100.00 filing fee. The landlords total award is \$320.00.

### Tenants Claim

The tenant testified that she did not request compensation for lack of heat or water leak at the time they occurred. In addition, the tenancy agreement requires the tenants to have insurance. Furthermore, the tenant did not provide sufficient evidence that the landlord was negligent or reckless to cause these issues and therefore have not met the

four elements listed above. Based on all the above, I dismiss the tenant's application in its entirety without leave to reapply.

Conclusion

The landlord has established a claim for \$320.00. I order that the landlord retain that amount from the \$637.50 deposit in full satisfaction of the claim and return the remaining \$317.50 to the tenants. I grant the tenants an order under section 67 for the balance due of \$317.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant's application is dismissed in its entirety without leave to reapply.

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 08, 2021

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Residential Tenancy Branch