



# 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, MNDCL-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 and for compensation under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent ("landlord") and the two tenants, female tenant ("tenant") and "male tenant," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 18 minutes.

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

At the outset of the hearing, I informed both parties that they were not permitted to record the hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules"). During the hearing, the landlord and the two tenants all affirmed under oath that they would not record this hearing.

I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with the hearing, they wanted me to make a decision, and they did not want to settle this application.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord confirmed receipt of the tenants' evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that both tenants were duly served with the landlord's application and the landlord was duly served with the tenants' evidence.

### Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit and for compensation under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' 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 documentary evidence and the testimony of both parties, 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.

Both parties agreed to the following facts. This tenancy began on February 15, 2020 for a fixed term to end on February 28, 2021. The tenancy ended on January 31, 2021. Monthly rent in the amount of \$1,600.00 was payable on the first day of each month. A security deposit of \$800.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. The tenants provided a written forwarding address to the landlord, by way of the move-out condition inspection report on February 1, 2021. The landlord did not have written permission to retain any amount from the tenants' security deposit. The landlord filed this application to retain the tenants' security deposit on February 8, 2021.

The landlord seeks a monetary order of \$872.00 plus the \$100.00 application filing fee. The tenants dispute a portion of the landlord's application.

The landlord claimed that the landlord seeks \$72.00 to clean the rental unit, which includes \$60.00 for the cleaning and \$12.00 for the cleaning materials. The tenant agreed to pay this amount during the hearing.

The landlord said that the landlord seeks \$800.00 and to offset the tenants' security deposit for this amount, because the tenants ended their fixed term early and breached their agreement.

The tenant testified regarding the following facts. The tenants broke the lease for safety reasons because there were seven fires at the rental property in a two-month period, of which three were intentionally set and were under investigation. The tenants did not feel safe and the doors to enter and exit the rental building did not latch properly, so anyone without a key could access the building. The tenants had to deal with fire alarms at the rental building. The tenants want their security deposit of \$800.00 back, minus the cleaning costs of \$72.00, that the tenants agreed to pay to the landlord during this hearing.

The landlord stated the following in response to the tenant's submissions. There were fires in the rental building, but it was on the opposite side from the tenants' rental unit. The police and fire department reports said that only two units were not liveable, but the rest were liveable. Two aggressive tenants moved out of the rental building. The rental unit was re-rented to new tenants on March 15, 2021.

### Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

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

I award the landlord \$72.00 for cleaning the rental unit. The tenants agreed to pay the above amount during the hearing.

On a balance of probabilities and for the reasons stated below, I dismiss the remainder of the landlord's application for \$800.00 without leave to reapply.

The following RTB *Rules* are applicable and state the following, 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 properly present her evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure*.

The landlord had ample opportunity to present her application and respond to the tenants' claims. During the hearing, I repeatedly asked the landlord if she had any other information that she wanted to add to her submissions. However, the landlord failed to go through any of her documents that were submitted for this hearing. I find that the landlord did not sufficiently prove her claim and that she failed to meet all four parts of the above test. I provided the landlord with ample time and opportunity to present her case during this hearing. I asked the landlord questions about her monetary claim, including the amounts being claimed, but she still failed to go through the landlord's documents at this hearing.

*Liquidated Damages*

During the hearing, the landlord did not explain the \$800.00 claim as "liquidated damages." She indicated it was a "breach" for the tenants ending their fixed term tenancy agreement early. However, the landlord's "security deposit refund" statement that the landlord did not review during this hearing, indicates "liquidation costs" of \$800.00.

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 indicate what specific section of the tenancy agreement provided for liquidated damages. The landlord did not provide copies of any advertisements posted to re-rent the unit, nor did she indicate if, when or how any advertisements were posted by the landlord. The landlord did not indicate how many inquiries were answered for the unit or how many showings of the unit were done. The landlord did not explain how the \$800.00 amount was a genuine pre-estimate of the loss.

Although the tenants vacated the rental unit prior to the end of their fixed term on February 28, 2021, I find that the landlord did not show how the \$800.00 claimed for liquidated damages was a genuine pre-estimate of the loss. The landlord did not indicate if the tenancy agreement even provided for liquidated damages. For the above reasons, I dismiss the landlord's claim of \$800.00 for liquidated damages without leave to reapply.

Since the landlord was only successful in this application based on what the tenants agreed to pay during the hearing, I find that the landlord is not entitled to recover the \$100.00 filing fee from the tenants.

### Security Deposit

The landlord continues to hold the tenants' security deposit of \$800.00. No interest is payable on the deposit during this tenancy. As the landlord applied to retain the deposit and in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$72.00 from the tenants' security deposit of \$800.00.

I order the landlord to return the remaining \$728.00 from the tenants' security deposit to the tenants within 15 days of receiving this decision. The tenants are provided with a monetary order for \$728.00. Although the tenants did not file an application for the return of their deposit, I am required to consider it on the landlord's application to retain the deposit, as per Residential Tenancy Policy Guideline 17.

I find that the tenants are not entitled to double the value of their security deposit, as the landlord applied to retain it on February 8, 2021, which is within 15 days of receiving the tenants' forwarding address on February 1, 2021. I find that neither party extinguished their right to the security deposit, since move-in and move-out condition inspections and reports were completed for this tenancy.

### Conclusion

I order the landlord to retain \$72.00 from the tenants' security deposit of \$800.00.

The remainder of the landlord's application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$728.00 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: June 10, 2021

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Residential Tenancy Branch