



# 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**

MND-S, MNDC-S, MNR-S, FF

### **Introduction**

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for alleged damage to the rental unit by the tenant;
- compensation for a monetary loss or other money owed;
- a monetary order for unpaid rent;
- authority to keep the tenant's security deposit to use against a monetary award; and
- to recover the cost of the filing fee.

The landlord's agent (landlord), the tenant, and the tenant's witness attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing.

The tenant confirmed receiving the landlord's evidence and application for dispute resolution. The tenant did not provide documentary evidence for the hearing.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Issue(s) to be Decided

Is the landlord entitled to the monetary compensation sought and to recover the cost of the filing fee?

### Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of December 1, 2020, for a fixed term through November 30, 2021, monthly rent of \$1,600, due on the 1<sup>st</sup> day of the month, and a security deposit of \$800 being paid by the tenant to the landlord. The written tenancy agreement shows the tenancy would continue after the date of the fixed term, on a month-to-month basis.

The landlord retained the tenant's security deposit, having made this claim against it.

The landlord's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Prorated rent, April 1-6, 2020	\$320
2. Liquidated Damages	\$800
3. Cleaning	\$200
4. Cleaning materials	\$40
5. Wall paint repairs	\$50
6. Late fee	\$25
<b>TOTAL</b>	<b>\$1,435</b>

The tenant agreed to the claim for the prorated rent for April 2021.

As to the claim for liquidated damages, the landlord submitted that the written tenancy agreement provided that in the event the tenant vacated the rental unit prior to the end of the fixed-term, the tenant was required to pay liquidated damages in the amount of \$800. The landlord submitted that the tenant initialed that portion of the written tenancy agreement. Filed in evidence was the written tenancy agreement.

The tenant submitted that the rental unit was rented out in six days and questioned that there were expenses totalling \$800.

As to the claim for cleaning, the landlord said that the tenant was not present for the move-out inspection as she said to just do the inspection and send the photos.

The landlord submitted the rental unit required some cleaning and repair of nail holes. The landlord said there were approximately seven nail holes. Filed in evidence were cleaning receipts.

The tenant submitted she spent quite a few hours cleaning, including the inside of drawers. The tenant said that the nail holes were from picture frames.

Tenant's witness –

The witness said that the condition of the rental unit, of which he had personal knowledge, was nothing that would cause concern. The witness also said he remembers paint being an issue at the beginning of the tenancy.

The landlord said the late fee claim is due to the non-payment of rent for April 2021.

### Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities, the civil standard of proof:

### Prorated rent for April 1-6, 2021

As the tenant agreed to this claim, I grant the landlord a monetary award of \$320.

### Liquidated damages

Residential Tenancy Branch Policy Guideline #4 (Liquidated Damages) states that in order to be enforceable, a liquidated damages clause in a tenancy agreement must be a genuine pre-estimate of 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.

In this case, I find the written and signed tenancy agreement required that the tenant pay a liquidated damages fee of \$800 in the event the tenant ended the fixed term tenancy prior to the date mentioned, here November 30, 2021. The tenancy ended on or before March 31, 2021.

I find the landlord submitted sufficient evidence to show that this term is intended to offset costs associated with procuring a new tenant. After reviewing this clause, I do not find the amount is unreasonable and I do not find it is a penalty. Therefore, I find the tenant is contractually obligated to, and is responsible for, paying the liquidated damages of \$800.

I grant the landlord a monetary award of \$800.

#### Cleaning, cleaning materials, nail holes

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean and undamaged, except for reasonable wear and tear.

Reasonable wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Under the Act, tenants are required to leave the rental unit reasonably clean when they vacate. The tenants are responsible for paying cleaning costs where the property is left at the end of the tenancy that does not comply with the Act. Tenants are not responsible for cleaning of the rental unit to bring the premises to a higher standard than required under the Act.

I have reviewed the landlord's video evidence and find this evidence proves the rental unit was left very clean by the tenant.

What the evidence showed me was that the landlord expected the tenant to leave the rental unit in move-in condition for the next tenant. In one instance, the landlord showed a very up-close clip of a barely discernible, tiny smudge in the bathroom sink. In another, I was not able to tell what the landlord intended to show. The stove top had white specks, which considering the landlord had a spackle scraper, or putty knife, lying on top of the stove looked to be the landlord's doing.

The landlord also pointed to a small spot on one of the oven rings, which I find showed the tenant did normal cooking. The oven looked like it was several years old, and I was not provided the same very close-up video of the same location from the beginning of the tenancy. I find this small spot was either reasonable wear and tear or there at the beginning of the tenancy.

I also find it puzzling why the landlord removed the front panel under an appliance and showed underneath the appliance in the video.

While the landlord may very well want to provide for detailed, additional cleaning for the next tenant, that is their right and obligation. However, I find the tenant complied with her obligation under the Act.

As to the seven nail holes, Residential Tenancy Branch (RTB) Policy Guideline 1 states that most tenants will put up pictures in their unit. A landlord may set rules as to how this can be done.

Policy Guideline goes on to state that if the tenant follows the landlord's instructions, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

I have reviewed the written tenancy agreement supplied by the landlord and find there to be insufficient evidence that the tenant was provided instructions on hanging pictures.

In my view, seven nail holes from hanging pictures is not excessive and is reasonable wear and tear from a tenant enjoying the rental unit as a home.

Due to the above reasoning, I find the landlord submitted insufficient evidence to support, and I therefore **dismiss**, their claim for cleaning, cleaning materials and nail hole repair, **without leave to reapply**.

I **dismiss without leave to reapply** the landlord's claim for a late payment of rent of \$25 for April 2021. The tenancy had ended by then, and the tenant is now obligated to pay the pro-rated rent for April 2021 and the liquidated damages.

As the landlord was successful with a portion of their application, I grant the landlord recovery of their filing fee of \$100.

Using the offsetting provisions contained in section 72 of the Act, the landlord may withhold the tenant's security deposit in partial satisfaction for a return of the monetary award.

### **Information for the parties**

The landlord is informed that they may want to review a tenant's obligations and their rights, as well as the landlord's obligations and rights under the Act in the future.

The documentary evidence supplied by the landlord indicated the tenant raised an issue with the landlord about her having paid a pet damage deposit. This matter was not addressed at the hearing and there was insufficient evidence submitted that a pet damage deposit had been paid.

If it comes to light that the tenant paid a pet damage deposit, the tenant may address that issue with her own application for dispute resolution.

### **Conclusion**

I issue a monetary order of \$420 in favour of the landlord as follows:

ITEM	AMOUNT
1. Prorated rent for April 2021	\$320
2. Liquidated damages	\$800
3. Filing fee	\$100
4. Less security deposit	(\$800)
<b>TOTAL</b>	<b>\$420</b>

The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this order as soon as possible to be enforceable. Should the tenant 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.

The tenant is cautioned that costs of enforcement may be subject to recovery from the tenant.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: November 8, 2021

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Residential Tenancy Branch