



# 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, FFL

### Introduction

On August 26, 2021, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

L.V. attended the hearing as an agent for the Landlord; however, neither Tenant attended at any point during the 15-minute teleconference. At the outset of the hearing, I informed L.V. that recording of the hearing was prohibited and she was reminded to refrain from doing so. She acknowledged this term, and she provided a solemn affirmation.

She advised that each Tenant was served with a separate Notice of Hearing and evidence package by registered mail on September 14, 2021 (the registered mail tracking numbers are noted on the first page of this Decision). She testified that the Tenants received these packages. As such, I am satisfied that the Tenants were duly served the Landlord’s Notice of Hearing and evidence packages. Furthermore, as the Landlord’s evidence was served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted all of the Landlord’s evidence and will consider it when rendering this Decision.

All parties 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 Order for compensation?

- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

L.V. advised that the tenancy started on October 6, 2020 as a fixed term tenancy ending on April 30, 2021. However, the tenancy also ended on this date because the Tenants abandoned the rental unit and gave up vacant possession without any written notice. Rent was established at \$1,400.00 per month and was due on the first day of each month. A security deposit of \$700.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She testified that a move-in inspection report was conducted on October 5, 2020 and that a move-out inspection report was not conducted with the Tenants as they did not even advise the Landlord that they were ending the tenancy. She conducted a move-out inspection report on May 3, 2021. A copy of the condition inspection reports was submitted as documentary evidence.

As well, she stated that the Tenants provided their forwarding address by email on August 24, 2021, and this was submitted as documentary evidence.

She advised that the Landlord is seeking compensation in the amount of **\$1,400.00** because the Tenants abandoned the rental unit and did not end the tenancy in accordance with the *Act*. She stated that they paid April 2021 rent, but the Landlord suffered a rental loss of May 2021 rent because of the manner with which they ended the tenancy.

She advised that the Landlord is also seeking compensation in the amount of **\$99.75** because the Tenants did not clean the carpet at the end of the tenancy. She stated that the Tenants had three children and they left the carpet dirty. She referenced an invoice submitted as the cost to clean the carpets.

She advised that the Landlord is seeking compensation in the amount of **\$144.00** because the Tenants did not clean the rental unit at the end of the tenancy. She referenced an invoice submitted to support the cost to clean the rental unit. This invoice indicated that the kitchen, toilet, and windows were among some of the issues that needed to be cleaned and that it took three hours, at a cost of \$40.00 per hour, to return the rental unit to a re-rentable state. As well, cleaning materials of \$24.00 were also required.

She advised that the Landlord is seeking compensation in the amount of **\$178.50** because the Tenants left the following furniture in the rental unit: sofas, a queen-sized bed, two kid's beds, two nightstands, a mirror, a dining table with chairs, and a TV with a stand. She referenced an invoice submitted as the cost to dispose of this refuse.

Finally, she advised that the Landlord is seeking compensation in the amount of **\$10.00** for the cost of a replacement laundry card; however, she stated that the Landlord is no longer seeking compensation for this.

### Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlord must offer at least two opportunities for the Tenants to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulations* (the "*Regulations*") outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenants have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit or pet deposit for damage is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* requires that the Landlord provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenants must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

As the consistent and undisputed evidence is that a move-in inspection report was conducted with the Tenants and that a move-out inspection report could not be conducted with the Tenants as they abandoned the rental unit, I am satisfied that the Landlord completed these reports in accordance with the *Act*. As such, I find that the Landlord has not extinguished the right to claim against the deposit.

Furthermore, Section 38 of the *Act* outlines how the Landlord must deal with the security deposit. With respect to the Landlord's claim against the Tenants' deposit, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, I am satisfied that the tenancy ended on April 30, 2021 when the Tenants abandoned the rental unit, and that the Landlord received the Tenants' forwarding address by email on August 24, 2021. As the Landlord's Application was made within 15 days of August 24, 2021, I do not find that the doubling provisions apply to the security deposit in this instance.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenants fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?
- Did the Landlord act reasonably to minimize that damage or loss?

With respect to the Landlord's claim for compensation in the amount of \$1,400.00 for May 2021 rent, as the undisputed evidence is that the Tenants ended the tenancy contrary to the provisions of the *Act*, I am satisfied that the Landlord suffered a rental

loss for May 2021. As such, I grant the Landlord a monetary award in the amount of **\$1,400.00** to satisfy this claim.

Regarding the Landlord's claim for compensation in the amount of \$99.75 for carpet cleaning, I am satisfied from the undisputed evidence that the Tenants left the carpet dirty at the end of the tenancy. Consequently, I grant the Landlord a monetary award in the amount of **\$99.75** to rectify this issue.

With respect to the Landlord's claim for compensation in the amount of \$144.00 because the Tenants left the rental unit in an unrentable state at the end of the tenancy, I am satisfied from the undisputed evidence that the Tenants failed to clean the rental unit completely at the end of the tenancy. Therefore, I grant the Landlord a monetary award in the amount of **\$144.00** to satisfy this issue.

Finally, Regarding the Landlord's claim for compensation in the amount of \$178.50 for the cost to dispose of furniture that the Tenants abandoned in the rental unit, I am satisfied from the undisputed evidence that the Tenants failed to remove their furniture at the end of the tenancy. As such, I grant the Landlord a monetary award in the amount of **\$178.50** to remedy this matter.

As the Landlord was successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of these claims.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Tenants to the Landlord**

Item	Amount
May 2021 rent	\$1,400.00
Carpet cleaning	\$99.75
Cleaning	\$144.00
Furniture disposal	\$178.50
Recovery of Filing Fee	\$100.00
Security deposit	-\$700.00
<b>Total Monetary Award</b>	<b>\$1,222.25</b>

#### Conclusion

I provide the Landlord with a Monetary Order in the amount of **\$1,222.25** in the above

terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: March 10, 2022

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Residential Tenancy Branch