



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes** RR, MNDCT, RP, OLC, LAT, LRE, FFT

### **Introduction**

The matter was originally scheduled for a hearing to be held on September 16, 2021 by way of teleconference call to deal with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

These matters were originally assigned to, and heard by, a different Arbitrator. The Arbitrator had started the hearing, and had to adjourn the hearing due to insufficient time to complete the hearing. Unfortunately, due to unforeseen circumstances, that Arbitrator is unable to attend the reconvened hearing, and accordingly this application was re-assigned to myself. As noted to both parties in the hearing, as I was not in attendance at the previous hearing, the hearing must be heard as a new hearing before myself. I thank both parties for their patience while waiting for a resolution to their dispute. I endeavored to provide both parties with a timely decision given the complexity of this case, and the volume of evidence and testimony to review and analyze.

The landlord was represented by their agents JN and RV, in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about

behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenants' dispute resolution application ('Application') In accordance with section 89 of the *Act*, I find the landlord duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed with the hearing.

At the outset of the hearing, the outstanding issues were clarified and confirmed with both parties. The previous Arbitrator had removed some issues at the previous hearing, as addressed in the interim decision dated September 16, 2021. The tenants confirmed that they wished to proceed with their monetary claims and application for a rent reduction of up to, and including May 2021 in order to not exceed the small claims limit of \$35,000.00. The tenants also indicated that they wished to remove items 9 and 11 on their monetary order worksheet, which are claims for pest control services and plugging stairs. Accordingly, the tenants' claims were adjusted to reflect these changes and acknowledgements.

### **Issues(s) to be Decided**

Are the tenants entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to the rent reductions requested?

Are the tenants entitled to recover the filing fee for this application?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed term tenancy started on March 1, 2020, and continued on a month-to-month basis until the tenancy ended on November 30, 2021. Monthly rent was set at \$2,390.00, payable on the first of the month. A security deposit of \$1,195.00 was collected for this tenancy.

The tenants filed a monetary claim in the amount of \$34,599.00. Their monetary order worksheet is reproduced below (full names removed for privacy):

Document Number	Monetary Order	Amount	Receipt/Estimate
1	Loss of Quiet Enjoyment	\$5,000	FORM2 Proof of Money Owed
2	Aggravated Damages	\$13,000	FORM2 Proof of Money Owed
3	V's Counseling	\$840	DOC18,DOC19,DOC20, DOC21,DOC22,DOC23, DOC24
4	A's Counseling	\$1008	DOC25,DOC26,DOC27, DOC28,DOC29,DOC30, DOC31,DOC32
5	Hotel Accomodations	\$1998	DOC14
6	Lock Change	\$157.70	DOC41
7	Spot Cleaner Equipment	\$132	DOC10
8	Professional Carpet and Rug Cleaner - Mice & Move-in Condition	\$165	DOC4
9	Pest Control Services (claim removed by tenants)	\$257	DOC3
10	Upholstery Laundering	\$48	DOC6
11	Plugging Stairs (claim remove by tenants)	\$2793	DOC35
12	Recovery of Filing Fee for Dispute Resolution	\$100	N/A
13	Rent Reduction	\$9,100	FORM6 Proof to Support Rent Reduction, FORM4 Proof of Request to the Landlord (Rent

The tenants removed items 9 and 11 above, and wished to proceed with the remaining claims.

The tenants submitted detailed evidence as well as testimony about the above claims. The tenants filed this application as they feel that the landlord had failed to act in a timely and reasonable manner to address outstanding issues during this tenancy. The tenants testified that the landlord had failed to properly inspect issues, perform

maintenance, and fulfill their obligations to address minor issues that became major ones. The tenants testified that these failures caused them undue stress.

The tenants submitted detailed documentation of the issues that they felt were poorly addressed or managed by the landlord, or not addressed at all. The issues include the failure of the landlord to properly clean the carpeted stairs, failing to adequately address the mice problem, failing to address issues brought up during the move-in inspection, ignoring the tenants' concerns about the heater, which eventually caused an electrical fire, and refusing to answer the tenants' questions or respond to them. The tenants testified that they had reported problems with the skylight upon move-in, which took months to fix. The tenants requested corresponding rent reductions for these issues, and the loss of enjoyment they suffered as a result.

The tenants testified that they felt so exhausted and frustrated that they sought alternative accommodation in a hotel, which they filed a claim for. The tenants submit that the landlord was dismissive, and failed to take proper action to address the pest control issues, which caused the tenants loss of quiet enjoyment with repeated visits which the tenants felt were unnecessary and disruptive. The tenants also felt that maintenance visits were inefficient, and only addressed one work order item at a time. The tenants detailed the visits and follow-ups in their evidentiary materials.

The tenants detailed the claims they attributed to the stress caused by the landlord, including the cost of counselling, hotel accommodations, and aggravated damages.

The landlord disputes all of the tenants' claims. The landlord's agents testified in the hearing that they responded to all the tenants' requests and always gave proper notice to address the issues reported. The landlord provided explanations in the hearings in response to the tenants' claims.

The landlord testified that they had dispatched pest control to address the mice problem, as supported by the invoices submitted in evidence. The landlord testified that the tenants had moved from a different unit, and had ample time to inspect the unit before moving in. The landlord testified that they had informed the tenants that it would take time to address the issues, which included the skylight. The landlord testified that they had informed the tenants of this, which they had agreed to at the move-in inspection. The landlord disputes the timeline provided by the tenants, and testified that the skylight was repaired within a month. The landlord testified the delay was due scheduling issues with the contractor due to a shortage of workers during the pandemic.

The tenants responded in the hearing that the landlord did inform them that there would be a delay, but the delay was supposed to be only a few weeks, and not months.

The landlord testified that despite their efforts and attempts to address the mice issue, the tenants were not happy, and testified that the mice were small “baby mice”, and “not that bad”. The landlord testified that no other tenants had complained after pest control was dispatched to their units. The landlord testified that the issue was made worse by the tenants as the tenants moved the traps from their designated areas. The tenants dispute moving the traps, and submitted photos to show the extensive problem they were dealing with, including having to deal with mice droppings throughout the entire unit, and in their furniture and belongings.

The landlord does not dispute that the heater caught on fire, but that they believed that the heater should not catch on fire, and was due to a foreign object being dropped into the heater.

The landlord testified that they manage six buildings, and that the tenants were not accommodating, nor did they support the losses claims. The landlord testified that instead the tenants changed the locks.

The landlord does not dispute that the written tenancy agreement did indicate that a dishwasher was included in the monthly rent, but that this was an obvious error as the tenants were well aware that the rental units in the entire building did not have dishwashers. The landlord disputes that the carpet was not cleaned, which the landlord testified was cleaned at the beginning of the tenancy. The landlord testified that they did not know where the receipt was.

The landlord also testified that the rental unit was in good condition, and was regularly maintained.

### **Analysis**

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenants must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

#### ***Liability for not complying with this Act or a tenancy agreement***

**7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss.*

Therefore, in this matter, the tenants bear the burden of establishing their claims on the balance of probabilities. The tenants must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

In this matter the tenants bear the burden to prove that it is likely, on balance of probabilities, that facilities listed in the tenants' application were to be provided as part of the payable rent from which its value is to be reduced. I have reviewed and considered all relevant evidence presented by the parties. On preponderance of all evidence and balance of probabilities I find as follows.

**Section 27 Terminating or restricting services or facilities**, states as follows,

**27** (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I find that for the purposes of this matter pursuant to Section 27(2)(b) and 65 that the use of a dishwasher is a qualifying **service or facility** stipulated in the **Definitions** of the *Act*. The tenants are seeking a rent reduction equivalent to \$100.00 per month for 14 months for the failure of the landlord to provide the tenants with the use of a dishwasher although this was an included facility as noted on the tenancy agreement. In considering this claim, I find that the landlord did provide a probable explanation for why the tenants did not have the use of a dishwasher despite this being included in the tenancy agreement. However, in light of the conflicting testimony where the tenants believe that they should have been provided with a dishwasher, I must rely on the evidence before me. I find that that the tenancy agreement clearly does stipulate, regardless of whether this is an error or not, that the use of a dishwasher was included in the monthly rent, and accordingly, the tenants' rent should reflect a reduction equivalent to the loss of use of such a facility. The expectation is that a tenancy agreement should be accurate, and any mistakes should be amended as soon as possible, which in this case no amendments had been made. The tenancy agreement included a term which the tenants felt was material to the tenancy, which was the use of a dishwasher, but the tenants were not provided with this facility. I find that the tenants are entitled to a rent reduction to reflect the absence of this facility. I have considered the tenants' claim which is a \$100.00 per month, for a total claim of \$1,400.00 for 14 months. As confirmed by the tenants in the hearing, the tenants' request for a rent reduction would be calculated up to and including May 2021. I do not find this amount to be supported, either with claims of similar nature, or with receipts for an equivalent service or substitute. I also find that for that amount, the tenants or landlord could have purchased a brand new dishwasher, which range from \$500-1,000.00 on average. I find that a reduction of \$50.00 per month to be fair considering the lack of the facility and the

inconvenience this caused the tenants, and accordingly, the tenants are granted a retroactive rent reduction of \$700.00.

I have considered the remainder of the rent reductions requested by the tenant. As noted above, the tenants bear the onus of establishing and supporting their claims. In relation to the mice, the tenants described the landlord's response as dismissive. Although I do find that the landlord did dispatch pest control to deal with the obvious infestation, I do find that the landlord minimized the impact that this issue had on the tenants. I find the words and phrases used by the landlord in the hearing to be dismissive in nature, which supports the tenants' testimony that the landlord did not believe the problem to be as significant as the tenants believed. For example, the landlord called the mice "baby mice" and considered the situation "not that bad". Although the mice may have been small, the presence of the mice, or other evidence of an infestation such as droppings, affected the tenants, and their ability to enjoy their rental unit. In this case, the tenants dispute the landlord's allegations that they had moved the mouse traps. I find that the landlord was not only dismissive of the tenants' feelings and concerns, the landlord placed some blame on the tenants for the ongoing issue, which I do not find to be supported in evidence. I find this was the also the case in relation to the tenants' concerns about the heater, which was reported by the tenants before the fire. Although the landlord believed that the heater should not catch on fire, the heater did, and after the tenants expressed their concerns about a strange smell. I must now determine whether the tenants are entitled to the rent reductions claimed. Similar to the tenants' claim for the dishwasher, I do not find the tenants had established how they should be entitled to a rent reduction of \$500.00 per month for the mice, or \$150.00 for the loss of the use of the loft following the fire, whether this is through claims of similar nature or receipts or invoices for losses. Although I acknowledge the significant impact these issues and events had on the tenants, the onus is still on the tenants to support their claims.

Residential Tenancy Branch ("RTB") Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

*An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.*



I find that the tenants are entitled to some compensation for the reduction in the value of the tenancy due to these issues and how they were addressed by the landlord. As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the tenants \$200.00 per month for 14 months, for a total monetary order of \$2,800.00 for the failure of the landlord to address the tenants' concerns as serious and urgent matters.

As noted above, the burden is on the applicant to support their claims. Although I find that there may have been delays in performing repairs, I find that the landlord did provide a valid and reasonable explanation for the delay in repairing the skylight. I find that the tenants were informed that there would be a delay, but unfortunately due to reasons beyond the landlord's control, the repair took longer than expected. I do not find that the other rent reductions listed in the tenants' claims were sufficiently supported, and therefore the remainder of the claims listed under rent reductions is dismissed without leave to reapply.

In consideration of the tenants' other claims, although the tenants did verify the amounts claims through invoices and receipts, the tenants must still substantiate and support these claims by showing that these claims or losses were due to the intentional or neglectful actions of the landlord, and then the tenants must demonstrate that they took reasonable steps to mitigate these losses. In this case, although I do not doubt that the tenants were affected by the issues in this tenancy, I am not satisfied that the tenants established that they had no choice but to temporary relocate to a hotel, or change the locks. I am also not satisfied that they established that the counselling was a necessary loss associated with the landlord's actions. For these reasons, I dismiss these claims without leave to reapply.

I find that the tenants did sufficiently support that the carpets were not clean, despite the contrasting testimony of the landlord. I find that the tenants established that the carpet was not clean, and therefore the tenants had to incur a loss in addressing the unresolved issue themselves. I also find that the mice infestation was not as minimal as the landlord described, and the tenants suffered monetary losses associated with having to deal with this issue. Accordingly, I allow the tenants' monetary claims for the spot cleaner equipment, the professional carpet and rug cleaner, and upholstery laundering.

Lastly, the tenants filed monetary claims for loss of quiet enjoyment and aggravated damages. In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's behaviour. They are measured by the wronged person's suffering.

The damage must be caused by the deliberate or negligent act or omission of the wrongdoer. However, unlike punitive damages, the conduct of the wrongdoer need not contain an element of wilfulness or recklessness in order for an award of aggravated damages to be made. All that is necessary is that the wrongdoer's conduct was highhanded. The damage must also be reasonably foreseeable that the breach or negligence would cause the distress claimed.

They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought. The damage award is for aggravation of the injury by the wrongdoer's highhanded conduct.

The tenants requested \$13,000.00 in aggravated damages for the stress and anxiety caused by the landlord's actions. In this case, although the tenants did suffer from stress, anxiety, and emotional distress during this tenancy, I am not satisfied that the landlord had failed to fulfill most of their duties or act reasonably other than the specific instances above. I find that although the landlord did dismiss some of the tenants' concerns such as the impact of the mice and the need to investigate the heater, I find that the landlord was not completely dismissive as evidenced by the fact that they did dispatch pest control, and attend to perform repairs. Although I find that the expectations of the tenants were definitely not met by the landlords, I am not satisfied that the tenants had sufficiently supported this claim in the amount of \$13,000.00. Accordingly, I dismiss this claim without leave to reapply.

In consideration of the remaining claim for loss of quiet enjoyment in the amount of \$5,000.00, the tenants were granted a monetary order of \$2,800.00 above for nominal losses associated with the losses the tenants suffered in this tenancy due to the landlord's actions. I find that the tenants failed to establish this additional loss above

what has been already granted in this decision, and accordingly, I dismiss this portion of the tenants' monetary claim without leave to reapply.

I allow the tenants to recover the filing fee as their application had merit.

### **Conclusion**

I issue a Monetary Order in the tenants' favour for \$3,945.00. The tenants are provided with this Order in the above terms and the landlord must be served with a copy of 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.

The remaining portions of the tenants' monetary application is dismissed without leave to reapply.

<b>Item</b>	<b>Amount</b>
Rent reduction for dishwasher	\$700.00
Nominal losses	2,800.00
Spot Cleaner Equipment	132.00
Professional Carpet and Rug Cleaner -Mice & Move-in Condition	165.00
Upholstery Laundering	48.00
Filing fee	100.00
<b>Total Monetary Order</b>	<b>\$3,945.00</b>

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: April 01, 2022

---

Residential Tenancy Branch