



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

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:

1. A Monetary Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security deposit under Sections 38 and 67 of the Act;
2. A Monetary Order for compensation for a monetary loss or other money owed – holding security deposit under Sections 38 and 67 of the Act; and,
3. Recovery of the application filing fee under Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's agent attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord's agent and I were the only ones who had called into this teleconference. The Landlord's agent was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord's agent that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord's agent testified that she was not recording this dispute resolution hearing.

The Landlord testified that she served the Tenant with the Notice of Dispute Resolution Proceeding package and evidence on September 1, 2022 by Canada Post registered mail (NoDRP package). The Landlord referred me to the Canada Post registered mail

receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Tenant was deemed served with the NoDRP package five days after mailing them on September 6, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

### Issues to be Decided

1. Is the Landlord entitled to a Monetary Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security deposit?
2. Is the Landlord entitled to a Monetary Order for compensation for a monetary loss or other money owed – holding security deposit?
3. Is the Landlord entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord's agent confirmed that this tenancy began as a fixed term tenancy on April 1, 2022. The fixed term was to end on March 31, 2023. The tenancy ended on July 31, 2022. Monthly rent was \$2,200.00 payable on the first day of each month. A security deposit of \$1,100.00 was collected at the start of the tenancy and is still held by the Landlord.

The Landlord's agent is claiming compensation for cleaning and painting that needed to be done after the Tenant vacated. The walls were damaged, scratched, and dirty, and there were many holes left unfilled by the Tenant. The Landlord's agent is claiming a total of \$180.00 for cleaning labour and materials, and \$270.00 for painting labour and materials. The Landlord's agent uploaded a copy of the receipt for the work that needed to be done.

The Landlord's agent claims \$1,100.00 for liquidated damages, and specifically for the Tenant breaking the fixed term tenancy. Section 4 of the tenancy agreement states:

*... if the Tenant terminates the tenancy before the end of the original term, the Landlord may, at the Landlord's option, treat this agreement at an end*

*and in such event the sum of \$1100.00 shall be paid by the Tenant to the Landlord as liquidated damages and not as a penalty. The payment by the Tenant of the said liquidated damages to the Landlord is agreed to be in addition to any other right or remedies available to the Landlord.*

The Landlord's agent stated that the liquidated damages is not a penalty clause because the Landlord had to re-rent the rental unit, and this sum is determined to be a genuine pre-estimate for this loss. The Landlord's agent had to clean the rental unit, advertise for new tenants, and show the rental unit. There is a lot of organization involved in finding new tenants.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Tenant's absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

***Consequences of not attending the hearing:*** *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

### ***Leaving the rental unit at the end of a tenancy***

**37** ...

- (2) *When a tenant vacates a rental unit, the tenant must*
  - (a) *leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and*

### ***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.*

Residential Tenancy Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline states, *"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. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due."* This guideline must be read in conjunction with Sections 7 and 67 of the Act.

Policy Guideline #16 asks me to analyze whether:

- a party to the tenancy agreement has failed to comply with the Act, Regulation, or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and,
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The Landlord's agent claimed compensation for damage and cleaning needed in the rental unit after the Tenant vacated. The Landlord's agent said the Tenant left the walls in the rental unit damaged, scratched, and dirty and breached Section 37(2)(a) of the Act. She said there were many holes left in the walls. The Landlord's agent provided a receipt for the total damages claimed; however, she stated she did not include all the damages that the Tenant did to the rental unit. I find, based on the undisputed testimony of the Landlord's agent, that she has proven that the Landlord is entitled to compensation for the damage done to the rental unit. I grant the Landlord compensation totalling **\$450.00** for the damage and required cleaning needed to be done to the rental unit after the Tenant vacated.

Residential Tenancy Policy Guideline #4-Liquidated Damages (PG#4) provides a statement of the policy intent of the legislation. PG#4 deals with situations where a party seeks to enforce a clause in a tenancy agreement providing for the payment of liquidated damages.

The Landlord's agent said the Tenant vacated before the end of his fixed term tenancy. She had to repair and clean the rental unit, advertise for new tenants, and show the rental unit. I find the Landlord's agent proved that the liquidated damages were not a penalty, but rather a genuine pre-estimate for this loss. I grant the Landlord the liquidated damages amount of **\$1,100.00**.

Having been successful, I find the Landlord is entitled to recover the application filing fee paid to start this application, which I order may be deducted from the security deposit held pursuant to Section 72(2)(b) of the Act. The Landlord's monetary award is calculated as follows:

Item	Amount
Cleaning and painting	\$450.00
Liquidated damages	\$1,100.00
Application filing fee	\$100.00
Less security deposit	-\$1,100.00
Total Monetary Award:	\$550.00

### Conclusion

I grant a Monetary Order to the Landlord in the amount of \$550.00. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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 Act.

Dated: June 04, 2023

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Residential Tenancy Branch