



# 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            MNDCL-S, FFL

### Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for monetary compensation for damages against the security deposit, and for the recovery of the filing fee paid for this application.

The initial hearing was held on August 30, 2018, but was adjourned by request of the Public Guardian and Trustee to allow for more time to locate the Tenant so he could participate in the hearing. The adjournment was granted, and the reconvened hearing was scheduled for October 19, 2018.

At the reconvened hearing, an agent for the Landlord (the “Landlord”) was present, as was a representative from the Public Guardian and Trustee, legal counsel for the Public Guardian and Trustee, the Tenant and an agent for the Tenant. The Tenant did not participate in the hearing, and instead the agent spoke on his behalf (the “Agent”).

The Tenant did not submit evidence prior to the hearing. At the initial hearing, it was confirmed that the Public Guardian and Trustee had received the Notice of Dispute Resolution Proceeding package and copies of the Landlord’s evidence, as it was their address that was provided as the forwarding address for the Tenant.

During the reconvened hearing, the Agent noted that the Tenant had not received copies of the Landlord’s evidence. However, the Public Guardian and Trustee confirmed that the evidence had been mailed to the Tenant and signed for, along with the Notice of Hearing documents for the reconvened hearing. As the Tenant and the Agent had the information to call into the hearing, I find that the package was forwarded to the Tenant from the Public Guardian and Trustee. I also find that as the address provided for the Tenant was that of the Public Guardian and Trustee, and the Landlord sent their evidence to this address, that the Tenant was duly served in accordance with Sections 88 and 89 of the *Act*.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

#### Issues to be Decided

Is the Landlord entitled to monetary compensation for damages?

Should the Landlord be allowed to retain the security deposit towards any compensation owed?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

#### Background and Evidence

The Landlord provided testimony that the tenancy began on May 1, 2017 and ended on May 3, 2018. Monthly rent was \$1,370.00 and a security deposit of \$685.00, plus a deposit of \$50.00 for two entry fobs was paid at the outset of the tenancy.

The Agent was unsure of the details of monthly rent and the security deposit, but believes it was correct as stated by the Landlord.

The Landlord stated that they are still in possession of the security deposit and fob deposit for a total amount of \$735.00. They testified that the Tenant did not agree to any deductions from their security deposit.

The Landlord stated that the Tenant was present at the move-in inspection, as well as the move-out inspection when the Agent was also present. They testified that the Tenant and the Agent refused to sign the Condition Inspection Report at move-out that was conducted on May 3, 2018. The Condition Inspection Report submitted into evidence shows that the Tenant signed at move-in. On the move-out portion of the report, there is no Tenant signature and instead, it notes "N/A evicted". The Condition Inspection Report at move-out also notes that the fobs and keys have been returned.

The Agent provided testimony that she attended the rental unit on May 3, 2018, when the Tenant was moving out. She left the written forwarding address, along with the keys to the rental unit on a ledge of the window and asked if the Tenant could complete the move-out inspection. She stated she was told that it could be done later, but nobody attended the rental unit to complete the inspection.

On May 7, 2018, the Agent stated that she went back to the rental building and again asked for a move-out inspection to be completed and was told that it had already been completed without the Tenant or a representative of the Tenant.

The Landlord testified that the first time they received the Tenant's forwarding address was in a letter dated June 7, 2018. The letter, from the Public Guardian and Trustee, was submitted into evidence.

The Landlord testified that the Tenant and Agent were present at the move-out inspection and were advised as to what needed to be cleaned or repaired in the rental unit. She stated that the time and date of the move-out inspection had been arranged verbally with both the Tenant and the Agent. The Agent was in disagreement and stated that they never received a time to complete the move-out inspection, and were denied when they requested that it be done.

The Landlord testified that the Agent refused to sign the Condition Inspection Report at move-out and told the Tenant not to sign the report either.

The Landlord has claimed a total of \$1,954.15 for damages, cleaning and repairs.

The first claim is for professional cleaning in the amount of \$240.00. The Landlord stated that this is for 5 hours of cleaning, along with \$40.00 of cleaning supplies. This included cleaning of the entire unit such as the cabinets, stove, and bathroom.

An invoice, dated May 8, 2018, was submitted into evidence by the Landlord. The invoice is for a total of \$240.00; \$40.00 for cleaning supplies and \$200.00 for 5 hours of cleaning.

The Agent testified that the entire rental unit was cleaned prior to the Tenant moving out. She noted that the oven on the stove didn't work, so had not been used. She stated that she cleaned everything, including light fixtures, blinds and window tracks.

The Landlord has also claimed for painting in the amount of \$183.75. The Landlord testified that the whole rental unit had to be painted at the end of the tenancy. They stated that the unit had been painted in 2017 prior to the Tenant moving in. The Landlord stated that as the unit was not cleaned well during the tenancy and there was garbage collected in the unit, there was damage to the paint on the walls that required re-painting after the Tenant moved out.

An invoice dated May 15/18 was submitted into evidence for \$183.75 for painting of the walls in the rental unit. The Condition Inspection Report at move-out notes that the walls require re-painting.

The Landlord has also claim for the cost of paint in the amount of \$61.25. An invoice for paint was submitted into evidence. The invoice, dated January 29, 2017 was for paint in the amount of \$284.73.

The Agent stated that the walls were not damaged in any way during the tenancy and noted that the Tenant had not even hung anything on the walls. The Agent also questioned whether the unit was painted prior to the Tenant moving in, as the unit did not smell like paint and there were smudges on the wall that the Agent washed off.

The Landlord has claimed compensation for floor sanitizing in the amount of \$210.00. The Landlord stated that there was an odour of urine throughout the rental unit, including on the vinyl and laminate flooring. A company was hired to sanitize to try to remove the odours, but it was not successful. An invoice dated May 7, 2018 from a carpet cleaning company was submitted into evidence for an amount of \$210.00.

The Landlord provided testimony that when the floor sanitizing did not work, they hired a company to complete odour removal in the rental unit. The Landlord stated that the company used a chemical to remove the odour from the floors and the walls and they were not able to enter the rental unit for 24 hours following the treatment. An invoice dated May 9, 2018 was submitted into evidence and outlines the work that was completed for an amount of \$997.50. The invoice notes that the work was completed due to urine contamination.

The Agent stated that she was in the rental unit frequently and never noticed an odour, other than when the patio door was open, due to the location of the garbage bins outside. She testified that the rental unit was cleaned throughout the tenancy, as well as thoroughly cleaned upon the Tenant moving out. She stated her belief that the odour removal treatment was not necessary as there was no odour in the rental unit.

The Landlord has claimed for compensation of costs spent for removing garbage from the rental unit and property in the amount of \$173.25. They stated that the Tenant left a box spring, couch, chairs and many garbage bags. They testified that the items had been seen at the Tenant's rental unit during the tenancy and were found by the underground gate to the building after the Tenant moved out.

The Agent stated that she cannot confirm who the items left by the gate belonged to. She testified that there were often items left in this area of the building and she had received permission previously to donate the items to people who needed them. She stated that none of the items left at the gate or elsewhere on the property belonged to the Tenant.

The final claim of the Landlord is \$88.40 for the Tenant overholding the rental unit by 2 days. An Order of Possession was issued to the Landlord, dated January 12, 2018, for the Tenant and any occupants to return possession of the property to the Landlord by February 28, 2018. An

email between the Landlord and the Public Guardian and Trustee was submitted into evidence confirming that the Tenant will vacate the rental unit by the end of April 2018.

The testimony of both parties confirmed that the Tenant vacated the rental unit on May 3, 2018. The Agent stated that the communication had not been clear and therefore she was not aware that the Tenant was to move out on April 30, 2018.

As the Landlord stated that the Public Guardian and Trustee had confirmed the moving date with the Landlord, the Agent responded that she should have been contacted as well to help arrange the move-out. It was her understanding that the tenancy would be continuing.

### Analysis

Based on the testimony and evidence of both parties, and on a balance of probabilities, I find as follows regarding each of the claims of the Landlord:

**Cleaning and cleaning supplies:** The first claim is for professional cleaning in the amount of \$240.00. The Landlord stated that this is for 5 hours of cleaning, along with \$40.00 of cleaning supplies. This included cleaning of the entire unit such as the cabinets, stove, and bathroom. The Condition Inspection Report at move-out notes areas throughout the rental unit that required cleaning.

However, in accordance with 35 of the *Act*, the Landlord is required to provide opportunities for the Tenant to attend the move-out inspection and sign the report. The parties were not in agreement as to what occurred with the move-out inspection, as the report was not signed by the Tenant.

The Agent stated that they did not participate in the move-out inspection, while the Landlord stated that the Agent and Tenant both refused to sign the report.

When parties to a dispute provide conflicting testimony regarding the events that occurred, the party with the burden of proof must provide additional evidence to establish what occurred, on a balance of probabilities. The Condition Inspection Report states "N/A evicted" for the Tenant's signature, as does a Security Deposit Refund form submitted by the Landlord.

Had the Tenant participated in the move-out inspection and refused to sign the report, I find it likely that the Landlord would indicate that on the form, instead of note that the signature was "not applicable".

I also find insufficient evidence from the Landlord to establish that a time and date was arranged with the Tenant to attend the move-out inspection, which would have confirmed that the Tenant attended, or was provided the opportunity to attend.

Instead, I am not able to confirm that the Landlord complied with the *Act* in regard to the scheduling and completion of the move-out report. Therefore, I find the Condition Inspection Report to not be reliable evidence as to the condition of the rental unit at the end of the tenancy. However, as the Condition Inspection Report at move-in was signed and agreed upon by both parties, I find that this can be relied upon to determine the condition of the rental unit at the beginning of the tenancy.

Therefore, I look to additional evidence to determine whether the rental unit required cleaning and cleaning supplies in the amount claimed by the Landlord. The Landlord submitted photos of the balcony, stove and oven, closet doors, window, bathroom sink, toilet, fireplace and kitchen cabinets.

The photos show considerable dirt and cleaning required and the file information for the photos determine that they were taken on May 8, 2018, after the Tenant moved out.

In order to determine if compensation is due, the *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* outlines a four-part test as follows:

- 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.

In the application of this test, I find that the Landlord proved the Tenant breached the *Act* through the photos submitted. Therefore, I find that the Tenant was not in compliance with Section 37 of the *Act*, by not leaving the rental unit in reasonably clean condition.

The invoice for cleaning and cleaning supplies submitted into evidence proves the value of the Landlord's loss and I find the amount to be reasonable and not excessive, based on the photos of the rental unit taken at the end of the tenancy. I determine that the Landlord is entitled to compensation for cleaning and cleaning supplies in the amount of \$240.00.

**Painting and paint:** The Landlord has claimed \$183.75 for painting and \$61.25 for the cost of the paint. However, as the parties were not in agreement as to when the rental unit was last painted, or whether any damage to the paint occurred during the tenancy, I look to the evidence of the Landlord to determine whether painting was needed in the rental unit.

I do not find sufficient evidence to establish that the paint was damaged during the tenancy and required re-painting. I also note that in accordance with *Residential Tenancy Branch Policy Guideline 40: Useful Life of Building Elements*, interior paint has a useful life expectancy of 4 years.

Without evidence to establish the age of the paint, or that any damage occurred, I find that I cannot determine that the Tenant breached the *Act* or caused damage beyond reasonable wear and tear to the paint. As such, I decline to award the Landlord any compensation for paint supplies or painting.

**Floor sanitizing and odour removal:** The Landlord has claimed \$210.00 for sanitizing of the floor in the rental unit, and \$997.50 for the cost of odour removal in the rental unit. The parties were not in agreement as to whether there was an odour in the rental unit that required treatment.

In the case, as the Landlord is claiming compensation, they have the onus to prove their claim, on a balance of probabilities. I find that an invoice from a carpet cleaning company in the amount of \$210.00, and an invoice for odour removal in the amount of \$997.50 establishes that there was an odour issue in the rental unit. I also find that the Condition Inspection Report at move-in does not note the presence of an odour in the rental unit.

By demonstrating the condition of the rental unit at the start of the tenancy, and submitting invoices for sanitizing and odour removal at the end of the tenancy, I find that the Landlord has demonstrated that there was likely an odour that they needed to remove at the end of the tenancy.

I also find that they proved the value of their loss through the submission of invoices, and demonstrated their attempt to minimize their losses by first having the unit sanitized. Only when the sanitizing did not work did the Landlord hire a professional company to conduct odour removal.

As such, I find that the Landlord is entitled to compensation in the amount of \$1,207.50; \$210.00 for sanitizing the floors, and \$997.50 for professional odour removal.

**Garbage disposal:** The parties were not in agreement as to whether the Tenant left belongings at the rental property that required disposal. While the Landlord submitted an invoice outlining that a mattress of the Tenant's was disposed off, during the hearing the Landlord stated that they were aware that the belongings were the Tenant's due to seeing the items in the Tenant's rental unit. The Agent disagreed that any of the Tenant's belongings were ever left on the property.

As stated above, when the parties disagree, the Landlord must provide sufficient evidence to

establish that their testimony is accurate. However, I find insufficient evidence to prove that the mattress and other items belonged to the Tenant, and therefore cannot confirm that the Tenant breached the *Act*. As such, I find that the four-part test fails, and I decline to award any compensation to the Landlord for garbage disposal.

**Overholding of unit:** The Landlord has claimed \$88.40 for the Tenant overholding the rental unit for May 1 and May 2, 2018. I accept the evidence before me that demonstrates that an arrangement was made for the Tenant to vacate the rental unit by April 30, 2018. Despite the Agent stating that this was not communicated to her, the communication appeared to be between the Landlord and the Public Guardian and Trustee.

The calculation for the rent is based on monthly rent of \$1,370.00, at an amount of \$88.40 for two days. I find that the Landlord experienced a loss of rental income through the Tenant remaining in the rental unit into May 2018, while not paying rent for May. Therefore, I find that the Landlord is entitled to compensation in the amount of \$88.40 for two days of rent.

**Security deposit:** As the Landlord has applied to retain the security deposit towards compensation owed, I refer to Section 38(1) of the *Act* which states the following:

Except as provided in subsection (3) or (4) (a), within 15 days after the later of  
(a) the date the tenancy ends, and  
(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

As the Tenant's forwarding address was provided to the Landlord on June 7, 2018, and the Landlord applied for Dispute Resolution on June 8, 2018, I find that they applied within the 15 days provided by the *Act*.

Although the Agent stated that the Tenant's forwarding address was provided earlier than June 7, 2018, I have no documentary evidence before me that this is the case. I accept the letter submitted into evidence, dated June 7, 2018, as the date that the forwarding address was received.

As the Landlord was in compliance with Section 38(1) of the *Act*, they may retain the security deposit towards any compensation owed. The Landlord has stated that they have a \$685.00 security deposit, as well as \$50.00 for the deposit on entry fobs, for a total amount of \$735.00.

As the Landlord was partially successful in their claim, I also award the recovery of the filing fee paid for the Application for Dispute Resolution in the amount of \$100.00, pursuant to Section 72 of the *Act*.

The Landlord is awarded a Monetary Order in the amount outlined below:

Cleaning and cleaning supplies	\$240.00
Sanitization and odour removal	\$1,207.50
Overholding rental unit	\$88.40
Filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$685.00)</i>
<i>Less fob deposit</i>	<i>(\$50.00)</i>
<b>Total owing to Landlord</b>	<b>\$900.90</b>

### Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$900.90** as compensation as outlined above. The Landlord is provided with this Order in the above terms and 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 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: November 7, 2018

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Residential Tenancy Branch