



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL MNDL-S

### Introduction

This hearing was convened in response to applications by the landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a monetary award for loss under the tenancy agreement pursuant to section 67 of the *Act* and to retain the tenants’ security deposit in satisfaction for loss; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both parties attended the hearing, with the tenants represented by tenant B.P., while the landlord was represented by agent, R.S. Both parties were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

Following opening remarks, the landlord asked to amend his application for a monetary award to a lower amount of \$264.75. As the tenants would not be prejudiced by this request, pursuant to section 64(3)(c), I amend the landlord’s monetary award to reflect this new amount.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award?  
Can the landlord recover the filing fee?

### Background and Evidence

The tenant confirmed this tenancy began on April 15, 2017 and ended on March 31, 2018. Rent was \$1,700.00 per month and deposits of \$850.00 each (pet and security) paid at the outset of the tenancy, continue to be held by the landlord.

The landlord said he was seeking a monetary award of \$264.75 due to damage to the walls, pest control services and for associated labour. The landlord said \$68.87 was due for paint required in the unit following the tenants' departure, while he sought \$70.88 for pest control services and \$125.00 for painting and cleaning services.

The landlord said it was a standard term of their tenancy agreement for pest control services to attend the property following the conclusion of the tenancy. A review of the tenancy agreement submitted by the landlord states as follows in section 5, "An inspection of the Premises for the presence of fleas must be completed by a professional pest control company, at the sole cost of the Tenant, upon the earlier of the pet or the Tenant vacating the Premises. The tenant must provide a copy of the flea inspection report to the landlord or agent, which report must clearly state whether or not there are any fleas present in the Premises."

The tenant disputed that any amount was due to the landlord following the conclusion of the tenancy. The tenant submitted a video depicting the state of the rental unit following move-out and argued the paint for which the landlords sought compensation should be considered normal wear and tear. The landlord argued the unit was last painted in April 2017 and the tenant had failed to show in his video the portion of the living room wall which required remediation. The condition inspection report filed in evidence showed the tenants disputed the charges sought by the landlord.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove his entitlement to a monetary award.

The landlord is seeking a monetary award of \$264.75 for paint, cleaning and pest control services. The landlord said the tenants had left the unit in an unacceptable state following the conclusion of the tenancy and remediation work was required in the suite. The landlord continued by explaining the charge for pest control services were a standard charge as per the terms of the tenancy agreement.

The tenant disputed any money was due, arguing the unit was left clean. The tenant attributed any problems with the paint to “normal wear and tear.”

When questions of normal wear and tear are raised by a party *Residential Tenancy Policy Guideline #40* provides direction for determining the useful life of building elements. This *Guideline* must be read in conjunction with *Guideline #1*, which states, “An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.”

After considering the testimony of all parties present, and having reviewed the landlord’s evidentiary package, I find the damage caused to the unit was not the result of deliberate damage or neglect and must therefore be considered in light of *Policy Guideline #40* which determines the useful life of items.

This guideline notes the following useful life of the following items listed by the landlord:

- Interior paint = 4 years

The landlord said the unit was painted in April 2017 and suffered from excessive damage. The useful life of interior paint is four years therefore the unit had used 25% of its life in March 2018 when the tenancy concluded. The landlord is awarded \$51.65 or 75% of the \$68.87 sought.

In addition to a return of costs associated with paint, the landlord seeks \$70.88 for pest control services and \$100.00 for labour and \$25.00 for cleaning.

After reviewing the tenancy agreement, I find the landlord has sufficiently demonstrated that the tenant agreed in section 5 of the agreement to pay an amount for pest control services. I therefore award the landlord \$70.88 as requested. Additionally, the landlord’s invoice associated with the painting required in the unit sufficiently demonstrates expenses incurred.

Section 37(2)(a) of the *Act* states as follows, “When a tenant vacates a rental unit, the tenant must leave the unit reasonably clean, and undamaged except for reasonable wear and tear.” After reviewing the video submitted to the hearing by the tenants, I find the unit was left in an acceptable condition and decline to award the landlord any amount sought for additional cleaning.

The landlord is awarded a monetary award of \$272.53 representing a portion of the paint, labour associated with painting, pest control services and a partial return of the filing fee.

Using the offsetting provisions contained in section 72 of the *Act*, the landlord may retain this amount from the tenant's security deposit.

### Conclusion

The landlord is ordered to return the pet deposit to the tenants in its entirety and to return \$577.47 of the tenants' security deposit.

The landlord may withhold \$272.53 from the tenants' security deposit in full satisfaction for a return of the monetary award granted, along with a return of a portion of the filing fee.

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 15, 2018

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Residential Tenancy Branch