



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: MNSD, MNDC, FF

## Introduction

This hearing dealt with an application by the tenant for the return of double their security deposit and a cross-application by the landlord for a monetary order. Both parties participated in the conference call hearing and had opportunity to be heard.

## Issue(s) to be Decided

Is the tenant entitled to an award of double her security deposit?

Is the landlord entitled to a monetary award?

## Background and Evidence

The parties agreed that the tenancy began on May 1, 2008 and ended on August 22, 2008 and that the tenant paid a \$540.00 security deposit on April 4, 2008. The parties further agreed that the landlord received the tenant's forwarding address on August 22, 2008 and that the landlord was entitled to deduct \$90.10 from the security deposit for carpet cleaning. The landlord returned the balance owing on the security deposit, as well as an overpayment, a key deposit and interest by means of a cheque dated September 9, 2008 which was mailed on September 18, 2008. The tenant made her application for dispute resolution on September 17 and the landlord made their application on September 26.

The landlord provided a copy of the tenancy agreement which showed that there was a fixed term lease which was to end on March 30, 2009. The tenancy agreement provides that if the tenant ended the tenancy prior to the end of the fixed term, liquidated damages in the amount of \$540.00 would be payable by the tenant. The landlord testified that the liquidated damages represent the cost of advertising, showing

the suite and performing credit checks on prospective tenants.

### Analysis

Section 38 of the Act provides that within 15 days of later of the end of the tenancy and the date the tenant provides a forwarding address in writing to the landlord, the landlord must either return the security deposit or file an application for dispute resolution for an order permitting them to retain the deposit. If the landlord fails to act within the 15 day timeframe, the tenant is entitled to compensation equivalent to the amount of the deposit. I find that the landlord failed to act within the statutorily prescribed timeframe and find that the tenant is entitled to an award of \$540.00. The tenant is awarded \$540.00.

Based on the signed tenancy agreement, I find that the tenant agreed to pay liquidated damages in the event that she ended the tenancy prior to the end of the fixed term. I accept that the liquidated damages are a genuine pre-estimate of the landlord's costs and are not a penalty. I find the landlord is entitled to recover from the tenant \$540.00 in liquidated damages. The landlord is awarded \$540.00.

### Conclusion

Each party has been awarded \$540.00 and I find it appropriate to set off the awards as against each other. As both parties have been successful, I find that each party must bear the cost of his or her own filing fee. The claims of each party are fully satisfied by the set off and no monetary order is issued.

Dated November 03, 2008.