



# Dispute Resolution Services

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

## **DECISION**

**Dispute Codes:** MNSD FF

### **Tenant Application**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for orders as follows:

1. Monetary Order for money for compensation for damage or loss under the Act, regulation or tenancy agreement; and
2. Monetary order for return of pet damage or security deposit pursuant to Section 67.

TOTAL AMOUNT OF MONEY CLAIMED IS: \$840.00 plus filing fees

### **Service**

I accept that the landlord was properly served with the Application for Dispute Resolution hearing package.

### **Conduct of The Hearing**

Both parties were given a full opportunity to be heard, to present evidence and to make submissions. Neither party requested an adjournment or a Summons to Testify.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

### **Submissions**

The tenant testified that he vacated the premises on September 30, 2008 and provided her forwarding address in writing to the landlord on September 30, 2008. The tenant testified that his security deposit has not been returned to him by the landlord.

The landlord acknowledged receipt of the tenant's forwarding address and testified that the security deposit was not returned due to a \$65.00 carpet cleaning charge and a liquidated damages charge for breaking the lease of \$400.00. The landlord testified that the tenant paid a deposit of \$420.00 on July 24, 2008 and these cleaning and damages charges left a balance owing to the landlord of \$45.00. The landlord testified that these items were noted on the Condition Inspection Report and that the tenant signed off on these charges on September 30, 2008. The landlord did not submit a copy of the condition inspection report in evidence.

The tenant submitted a copy of the condition inspection report bearing his signature. The tenant testified that the only charge he agreed to was the \$65.00 charge for carpet cleaning, the tenant testified that the additional charge of \$400.00 was added after he signed the condition inspection report.

### **Findings**

Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, to either return the deposit or file an Application for Dispute Resolution for an Order to retain the deposit.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

The tenant has submitted a copy of a condition inspection report which he acknowledges bears his signature and which shows the deductions of \$65.00 for carpet cleaning and \$400.00 for liquidated damages leaving a balance owing to the landlord of \$45.00. While the tenant says the \$400.00 charge was added after he signed the document, I find this improbable as the copy of the document submitted in evidence by the tenant shows the \$400.00 deduction. If that sum were not on the Condition Inspection Report as signed by him then the tenant's copy would not show it. However the Condition Inspection Report the tenant signed does state:

I agree with the amounts noted above and authorize deduction of any **Balance Due to Landlord** from my Security Deposit and/or Pet Damage Deposit. If the total owing to the Landlord exceeds my deposit(s), I agree to pay the Landlord the excess amount". (emphasis added)

The "Balance due to Landlord" on the report is \$45.00. I therefore accept that the tenant agreed to a deduction of \$45.00 from his security deposit. As the balance of the security deposit has not been returned to the tenant I find that the tenant is entitled to double the deposit plus the costs of making this application.

Total monetary award payable by the landlord to the tenant:

Security Deposit paid on July 24, 2008	\$420.00
Double Security Deposit	420.00
Interest on original amount paid from date security deposit paid to date of this order	2.25
Filing Fees	50.00
Less "Balance due to Landlord:	-45.00
<b>TOTAL MONETARY AWARD</b>	<b>\$847.25</b>

The tenant will be provided with an Order 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.