



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      MNSD

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution requesting return of his security deposit.

### Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary Order for the return of his security deposit, pursuant to sections 38 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenant submitted a summary document stating why he felt he should get his security deposit back. He indicated in this document that he had received \$100.00 back already but that he wanted the rest back. This document also indicated that he had had the rental unit professionally cleaned and that he had 5 witnesses available.

The tenant also submitted two photographs: one photograph showing the blinds in a window and patio door and one of the kitchen area. The photograph of the kitchen area is date stamped as April 10, 2005.

The landlord submitted the following documents into evidence:

- A summary of the condition and events that led up to the tenant's vacating the rental property;
- A copy of a tenancy agreement signed by the parties on March 19, 2004 for a 6 month fixed term tenancy beginning on April 1, 2004 that converted to a month to month tenancy on September 30, 2004 for rent in the amount of \$690.00 due on the 1<sup>st</sup> of the month and a security deposit of \$340.00 paid on March 19, 2004;
- A copy of a print out of the Deposit Interest Calculator used by the landlord to determine the security deposit and interest accumulated since the tenancy began in the amount of \$352.05;
- A copy of the tenant's notice to vacate the rental unit indicating he would be moving out on January 31, 2009;
- A copy a cheque issued to the tenant in the amount \$112.05 dated February 3, 2009 with the memo line reading: "DD #104 – Prin = 100.00 Int = 12.05 Balance

= estimated cleaning and repair”. The copy of the cheque includes front and back showing the cheque had been cashed;

- A copy of a Condition Inspection Report – completed both at move in and at move out with Section AA completed and signed by the tenant agreeing to deductions for 2 days overholding; cleaning, blind replacement, and floor area re-varnished (8 feet square); and
- A document entitled “104 Charges” outlining the total charges against the security deposit amounting to \$480.00.

The tenant testified that he had signed Section AA of the Condition Inspection Report but that it had not been completed until after it had been signed, or at least that it had partially been altered. The tenant noted the different pen and writing for part of the section.

The landlord’s agent testified that the document had been partially prepared prior to the inspection and the different pen was used by the landlord who conducted the inspection with the tenant. The landlord further stated that the document entitled “104 Charges” was sent to the tenant to show what had been charged against the security deposit.

The tenant testified he had the rental unit professionally cleaned and his cleaning person was a witness but she was not available for this hearing. The tenant also provided the name and phone number of another witness, however when I tried to call the witness into the hearing she was not available. No other witnesses were identified by the tenant.

### Analysis

Section 38 of the *Act* states a landlord may retain an amount from a security deposit if the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. The tenant provided no evidence to support his claim of an altered Condition Inspection Report.

From the evidence and testimony provided, I accept that the Condition Inspection Report was signed by the tenant agreeing to deductions for overholding; cleaning, blind replacement, and floor area re-varnished (8 feet square). The agreement did not include actual amounts.

Also from the evidence presented, I find the tenant was informed of the actual amount being withheld on the face of the cheque for the \$112.05 that was presented to him at the time of completion of the move out inspection.

I find the tenant’s photographic evidence to be inconclusive to determine the condition of the rental unit at the end of the tenancy, due to the date stamp of April 2005 and the unattributed date for the second photograph.

In the absence of any witnesses to confirm the tenant's claim of the condition of the rental unit at the time the tenant moved out I find the Condition Inspection Report accurately portrays the condition of the rental unit at that time.

Conclusion

Based on the above, I dismiss the tenant's application for his security deposit, without leave to reapply.

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: December 01, 2009.

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Dispute Resolution Officer