



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes**

MNSD, MNDC, FF

### **Introduction**

This hearing was convened in response to cross applications by the landlord and the tenant. Both parties filed late amendments to their applications one week before this hearing. At the outset of the hearing, both parties agreed to set aside their late amendment claims in favour of proceeding only on the merits of their *original applications* and claims as they were filed in August 2009; but, would be permitted to rely on their late submissions in support of their claims, as each party had received the submissions, neither was prejudiced. Therefore:

The tenant seeks return of their deposits (security and pet damage) in the total amount of \$1000 plus accrued interest, and double the original deposits as per compensation under Section 38 of the Residential Tenancy Act (the Act), and recovery of the filing fee for this application.

The landlord seeks to retain a portion of the deposits in the amount of \$275 for cleaning of the rental unit, post tenancy, and to recover the filing fee for this application.

Both parties attended the conference call hearing and each participated with their prior submissions and testimony.

### **Issues(s) to be Decided**

Is the tenant entitled to the monetary amounts claimed?

Is the landlord entitled to the monetary amounts claimed?

## **Background and Evidence**

There was considerable contrasting testimony in this matter. However, the undisputed testimony is that the tenancy started March 15, 2009, and ended August 01, 2009. At the outset of the tenancy the landlord collected a security deposit and pet damage deposit in the total amount of \$1000. At the end of the tenancy the tenant provided the landlord with their written forwarding address for the return of the deposits.

Start and end of tenancy inspections were conducted by the parties. The parties submitted the Condition Inspection Report (Report) for the start and end of tenancy inspections. Both parties agree the move out inspection date was erroneously recorded as September 01, 2009 instead of August 01. The Report indicates a number of areas of the Report in which they are marked as deficient in cleanliness. There is no damage noted in the report, only that most areas, in part, are marked as *dirty (DT)*. The tenant signed the Report in agreement with the condition of the rental unit as stipulated in the Report. The parties were not able to come to agreement on a pre-estimate of the cleaning required to mitigate the undisputed Report.

The tenant and landlord testified that subsequent to the move out inspection, the tenant was permitted to return to do additional cleaning on August 05, 2009, and the parties met again on August 13<sup>th</sup> to review the condition of the rental unit. The tenant claims that they did additional cleaning between the mutual inspection dates with the help of 2 other people, but that the landlord was still not satisfied. The landlord claims that despite giving the tenant additional opportunity to remedy the original state of the rental unit, the unit was still left unclean. The landlord submitted photo evidence claimed to have been garnered the day after the second meeting on August 13<sup>th</sup>, which the landlord maintains shows the suite was left in an *unreasonably* unclean state. The landlord's claim is for carpet cleaning in the amount of \$150, and \$125 for general cleaning, of the purported 1500 square foot suite. The landlord has not submitted proof of the carpet cleaning and claims a global amount for the cleaning. The tenant claims the suite was ultimately left in *reasonably* clean condition, or sufficiently clean, and therefore they should not be liable for any deduction from their deposit.

In addition to the return of their security deposits, the tenant's application seeks the return of double their deposits on their information that the landlord's application for dispute resolution was filed later than prescribed in legislation, and therefore the tenant would be entitled to double. The tenant's information is that the landlord filed for dispute resolution on August 27, 2009.

### **Analysis**

In respect to the tenant's application;

Section 38 of the Residential Tenancy Act provides as follows:

#### **Section 38(1)**

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

Further: 38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

**I find** the application evidence before me is that the landlord filed for dispute resolution and paid the prescribed fee for the application on August 14, 2009 – within the lawfully prescribed 15 days from the end of the tenancy, and therefore in compliance with

Section 38 of the Act. As a result, **I must dismiss** the tenant's application without leave to reapply.

In respect to the landlord's application;

On the preponderance of all the evidence before me, and on the balance of probabilities, I favour portions of evidence from both parties. However, **I prefer** the evidence of the landlord and in so doing **I find** the landlord has met their burden of proving their claim that the tenant left the rental unit sufficiently unclean so as to incur cleaning costs by the landlord. In the absence of a receipt for the carpet cleaning, but in consideration of the particulars agreed to by the parties in the Condition Inspection Report, I grant the landlord global compensation for cleaning of the rental unit in general, in the amount of **\$150**. As the landlord's claim has merit, the landlord is entitled to recover the filing fee from the tenant in the amount of **\$50** – for a total entitlement of **\$200**.

**I Order** the landlord is permitted to retain **\$200** from the tenant's deposits totaling \$1011.97, and return the balance of **\$811.97** to the tenant, forthwith.

### **Conclusion**

To perfect my Order, the tenant is being provided with a Monetary Order under Section 67 of the Act, for the amount of **\$811.97**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: December 18, 2009.

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