



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes MNDC, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement, for the return of double the security deposit and a Monetary Order to recover the filing fee.

The tenant served the landlord by registered mail on October 14, 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Is the tenant entitled to compensation for damage or loss under the *Act* and if so how much?
- Is the tenant entitled to receive double the security deposit back?

### Preliminary Issues

The landlord has pointed out that the tenants application is for \$440.00 and has raised concerns about how the tenant came to this amount. The tenant confirms he has made a mathematical error in his figures as he applied for double the security deposit at an amount of \$440.00 instead



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of \$450.00 and he has deducted \$100.00 he agreed the landlord could retain. As this is a mathematical error I have allowed the tenant to amend his application.

## Background and Evidence

Both parties agree that this month to month tenancy started on April 01, 2002 and ended on June 30, 2009. Rent for this unit was \$650.00 per month and was due on the first of each month. The tenant paid a security deposit of \$325.00 on March 26, 2002. The tenant also paid \$35.00 for the garage door remote control and \$20.00 for a key deposit. These two deposits have been returned to the tenant

The tenant testifies that he moved from the rental unit and was not contacted to attend a move out condition inspection. The tenant gave the landlord his forwarding address in writing on June 29, 2009. The tenant testifies that the landlord did not return his security deposit to him within 15 days. The tenant sent the landlord a letter dated August 22, 2009 requesting the return of his security deposit. In this letter the tenant also states that he agrees the landlord may keep \$100.00 of his security deposit to pay for the repair of a carpet in the unit due to two cigarette burns that occurred during his tenancy. The tenant testifies that he did not give his permission for the landlord to retain anything else from his security deposit as he felt any other repairs were due to normal wear and tear.

The landlord testifies that he had to replace the linoleum in the unit and wash, bleach and repaint the walls due to nicotine stains. The landlord also testifies that the carpet was not repairable. The building manager testifies that she had to clean the unit and this took in excess of 15 hours. She has charged the tenant \$13.00 per hour for this work and retained this from his security deposit. The building manager also testifies that the cigarette burns to the carpet were repaired and the tenant was not charged for this work.

The landlord testifies that at the end of the tenancy the tenant verbally agreed with the building manager that she should do the cleaning to the rental unit and keep this amount from the

security deposit. The landlord confirms that this agreement was not in writing and that the move out condition inspection was done in the tenants' absence.

## Analysis

Both parties agree that the tenant did give the landlord his forwarding address in writing on June 29, 2009. The landlord has not presented any evidence to show that the tenant agreed that the landlord could keep the security deposit at the end of the tenancy. Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit (plus any interest accrued on the original amount) to the tenant.

Based on the above I find that the tenant did not give written permission for the landlord to keep all the security deposit as required by section 38(4)(a). However, the tenant did give the landlord written permission to keep \$100.00 from the security deposit for repairs to the carpet. I further find that the landlord did receive the tenants forwarding address in writing on June 29, 2009. As a result, the landlord had until July 14, 2009 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit or file an application to keep it. Therefore, I find that the tenant has established a claim for the return of double the security deposit less \$100.00 he agreed the landlord could keep plus accrued interest of \$11.49 on the original amount.

As the tenant has been successful with his claim I find he may recover the \$50.00 filing fee paid for his application from the landlord pursuant to section 72(1). Therefore, I find the tenant is entitled to a Monetary Order as follows pursuant to section 67 of the *Act*:



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Double the balance of the security deposit (\$225.00 X 2)	\$450.00
Filing fee	\$50.00
<b>Total amount owed to the tenant</b>	<b>\$511.49</b>

## Conclusion

I HEREBY FIND in favor of the tenants amended monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$511.49**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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: February 08, 2010.

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Dispute Resolution Officer