



# 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 cross Applications for Dispute Resolution. The tenant applied to have a monetary order for return of their security deposit. The landlord applied for a monetary order for compensation for loss or damages.

The hearing was conducted via teleconference with both tenants and the landlord in attendance. The landlord also had one witness and the tenants had two witnesses. Each witness provided their own testimony and each party was provided an opportunity to question the witnesses.

Prior to the hearing I had not received any evidence from the landlord. I questioned the tenants to see if they had received any and they confirmed that they received 5 invoice/receipts and a document providing details of the dispute.

As the tenants had received the documents I allowed the landlord to submit the same documents to me by the end of business on February 18, 2010. The documents were received by the end of business on February 17, 2010.

### Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for all or part of the security deposit; for compensation for damage or loss under the *Residential Tenancy Act (Act)*; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Act*.

In addition, it must be determined if the tenant's are entitled to a monetary order for the return of double the amount of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Act*.

### Background and Evidence

The tenant submitted the following documents into evidence:

- A copy of the tenancy agreement and addendum signed by the parties on August 30, 2008 for a month to month tenancy beginning on September 15, 2008 for a

monthly rent of \$800.00 due on the 1<sup>st</sup> of the month, with a security deposit paid on August 30, 2008;

- A copy of a carpet cleaning receipt dated September 21, 2009;
- A copy of the letter the tenants provided to the landlord, dated August 22, 2009, providing the landlord of the tenant's intention to end the tenancy on September 30, 2009. The letter included a forwarding address for the tenants and a request for the return of the security deposit; and
- One page of a Condition Inspection Report dated one month after the start of the tenancy.

The landlord submitted into evidence:

- A document entitled Details of the Dispute;
- A receipt dated August 24, 2009 signed by the landlord stating that a third party received \$50 for lawn cutting for July;
- An invoice from a carpet cleaning contractor dated October 15, 2009 in the amount of \$78.75;
- A receipt dated October 1, 2009 signed by the landlord that she had provided payment to a third party for 4.5 hours of cleaning services in the amount of \$76.50;
- Two invoices (July, 2009 and August 2009) from the landlord charging \$100.00 each for watering the yard;
- An invoice dated October 17, 2009 for 11 hours of cleaning services in the amount of \$165.00; and
- A copy of 3 of the 4 pages of a Condition Inspection Report, signed by both parties for the move-in inspection completed on October 16, 2008.

The tenancy ended on September 30, 2009, however the majority of belongings had been moved out of the rental unit by mid September and the landlord stated the keys were returned on September 26, 2009.

The landlord testified that tenant was quite upset and was not able to complete the inspection report when both were available. The landlord testified that the last time she saw the tenant; the tenant said that her neighbour/friend would do the inspection as she needed to get to the airport.

The landlord testified that she had been waiting to hear from the tenant before taking any further steps as she states the tenant indicated to her that she would contact the landlord. The landlord also claims the tenants told her to not use the forwarding address they had provided.

The tenant testified she offered to complete the move out inspection with the landlord but that she refused stating everything looked fine and that she would return the security deposit. The tenant continued that she had waited until October 18, 2009 and when they had not received the security deposit back they contacted the landlord.

The tenants stated that the landlord now wanted to claim for cleaning and carpet cleaning. The tenants stated that was not the agreement and the landlord must return the deposit or they would file an Application for Dispute Resolution.

The landlord testified that the tenancy agreement stipulated that the tenants were supposed to cut the grass and water the yard but that were not doing that so she had to hire someone to do it. She hired a neighbour to cut the grass and herself to water the yard. No amendment to the tenancy agreement or additional agreement for additional charges was submitted into evidence.

The tenants' witnesses provided testimony confirming the tenant made an offer to the landlord to complete the inspection and that the landlord refused stating it was not necessary. Both witnesses testified that the tenants were impeccable housecleaners and that the female tenant was a professional cleaner.

The landlord's witness testified to the state of the rental unit. This witness stated she performed cleaning services for the landlord in the rental unit and that the fridge and stove required cleaning; the floors were washed "several" times and the cupboards had crumbs left behind.

### Analysis

Section 38 of the *Act* stipulates that a landlord must within 15 days of the end of the tenancy and receipt of the forwarding address repay the tenants the security deposit plus interest less any mutually agreed upon deductions or file an Application for Dispute Resolution to claim against the security deposit.

The section goes on to say that should the landlord failed to comply with the above requirement the landlord **must** pay the tenant double the amount of the security deposit. I find the landlord's testimony that the tenant asked her to not send the security deposit to the address provided as unlikely and as such the landlord has failed to comply with the *Act*. I find the tenants are entitled to double the amount of the security deposit.

As to the landlord's claim to compensation for watering and lawn cutting, from the testimony provided I do not find any agreement by the parties to these arrangements. A landlord cannot change the terms of a tenancy agreement unilaterally, including adding additional charges for services, therefore I dismiss the landlord's claim for \$300.00 for these activities.

As the tenants have submitted a receipt confirming that they completed carpet cleaning I find there was no need for the landlord to hire or complete carpet cleaning and therefore dismiss her claim in the amount of \$78.75.

For the receipt submitted by the landlord claiming 4.5 hours of cleaning for a total of \$76.50, in fact I find that this is not a receipt at all by merely the landlord's accounting of

a potential cost. The landlord has failed to prove there was any financial loss; I therefore dismiss this part of her application.

As the landlord has provided much cause to doubt her testimony, I find the testimony of the tenants and their witnesses to be more credible in relation to the condition of the rental unit at the end of the tenancy. I therefore dismiss the landlord's claim for any amount for cleaning.

As the landlord was unsuccessful in any part of her application, I dismiss her request for recovery of the filing fee for her application.

### Conclusion

I find that the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$854.06** comprised of \$804.06 double the amount of the security deposit and interest and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced 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 18, 2010.

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Dispute Resolution Officer